FILED
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ALEXANDER L. STEVAS,

Nos. 82-206 and 82-229

In the Supreme Court of the United States

October Term, 1982

FIREFIGHTERS LOCAL UNION NO. 1784,
Petitioner,

vs.

CARL W. STOTTS, et al.,
Respondents,

and

MEMPHIS FIRE DEPARTMENT, et al.,
Petitioners,

vs.

CARL W. STOTTS, et al.,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

JOINT APPENDIX

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Certiorari Granted June 6, 1983

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IN THE
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT
OF TENNESSEE
WESTERN DIVISION

No. 77-2104

CARL W. STOTTS, Individually, And On Behalf Of All Others Similarly Situated,
Plaintiffs,

vs.

MEMPHIS FIRE DEPARTMENT; ROBERT W. WALKER, Director of Fire Services; THE CITY OF MEMPHIS; JOSEPH SABATINI, Director of Personnel For the City Of Memphis,
Defendants,

and

FIREFIGHTERS LOCAL UNION NO. 1784,
Intervenor-Defendant.

DOCKET SHEET

DATE	NR.	PROCEEDINGS
2/16/77	1	Complaint
3/ 1/77	2	Answer of Defts.
10/ 1/79	68	DEFENDANTS MOTIONS FOR SUMMARY JUDGMENT & CLASS DECERTIFICATION & MEMORANDUM OF FACTS & LAW IN SUPPORT OF SAID MOTIONS
10/31/79	85	PLF'S RESPONSE TO DEFTS' MOTION FOR SUMMARY JUDGMENT AND CLASS DECERTIFICATION
12/13/79	89	ORDER DENYING DEFENDANTS' MOTIONS - all of defendants' motions are denied - CHJ, FIELDS, PIERCE & YOUNG

4/25/80	90	CONSENT DECREE - by agreeing to the issuance of this order, the parties, waive a hearing & findings of fact & conclusions of law on all issues raised by complaints & have mutually agreed to the entry of this Consent Decree - the purpose of this decree is to remedy the past hiring & promotion practices of the Memphis Fire Department with respect to employment of blacks & continuing the efforts made in the City in hiring & promotions under the consent decree entered in 74-286 - city shall pay attorneys' fees & costs - Court retains jurisdiction of this action - Class members may file objections - notices will be posted at each firehouse for a period of 15 days beginning April 28, 1980 & mailed to each identified class member listed in Exhibit B on that date - members who file written objections w/in this period shall be entitled to be heard on their objections at a hearing before this Court on 5/16/80 - if no written objections are filed w/in 15 day period, this Consent Decree shall become final without further action by the Court - CHJ, OB, FIELDS, PIERCE & YOUNG - *ALL OBJECTIONS TO THIS SETTLEMENT AGREEMENT MUST BE FILED IN WRITING WITH CLERK BY CLOSE OF BUSINESS MAY 12, 1980. OBJECTIONS AFTER THAT DATE WILL NOT BE CONSIDERED*

5/ 4/81	122	VERIFIED APPLICATION FOR TEMPORARY RESTRAINING ORDER & ORDER FOR DEFENDANTS TO SHOW CAUSE WHY A PRELIMINARY INJUNCTION SHOULD NOT ISSUE WITH SUPPORTING MEMORANDUM
5/ 4/81	123	TEMPORARY RESTRAINING ORDER - deft are hereby restrained from laying off or reducing in rank any black employees in the Memphis Fire Dept. - application for a preliminary injunction will be heard at 2:00 pm on the 8th day of May, 1981, Courtroom No. 2 - CHJ, FIELDS, PIERCE & YOUNG
5/ 5/81	124	ANSWER OF FIREFIGHTERS LOCAL UNION NO. 1784 TO PLAINTIFFS' APPLICATION FOR INJUNCTIVE RELIEF
5/ 7/81	125	CONSENT ORDER ALLOWING INTERVENTION OF FIREFIGHTERS LOCAL UNION NO. 1784
5/ 7/81	126	PLAINTIFF'S SUPPLEMENTAL MEMORANDUM IN SUPPORT OF A PRELIMINARY INJUNCTION
5/ 8/81	127	ANSWER OF DEFENDANTS TO PLAINTIFFS' APPLICATION FOR INJUNCTIVE RELIEF
5/ 8/81	128	DEFENDANTS' BRIEF IN OPPOSITION TO PLAINTIFFS' APPLICATION FOR PRELIMINARY INJUNCTION

5/ 8/81	129	DEPOSITION OF MAYOR WYETH CHANDLER - 1 vol. - (case nos. 77-2104 & 79-2441) placed in 77-2104 file.
5/ 8/81	130	DEPOSITION OF MR. JOSEPH D. SABBATINI - 1 vol. - (case nos. 77-2104 & 79-2441) placed in 77-2104 file.
5/18/81	131	APPLICATION FOR STAY PENDING APPEAL ON BEHALF OF DEFENDANTS (City of Memphis)
5/18/81	132	MEMORANDUM IN SUPPORT OF DEFENDANTS' APPLICATION FOR STAY PENDING APPEAL
5/18/81	133	MOTION OF INTERVENOR FIREFIGHTERS LOCAL UNION NO. 1784 TO STAY INJUNCTION PENDING APPEAL
5/18/81	134	MEMORANDUM IN SUPPORT OF MOTION OF INTERVENOR-APPELLANT FIREFIGHTERS LOCAL UNION NO. 1784 TO STAY INJUNCTION PENDING APPEAL
5/18/81	135	ORDER GRANTING PRELIMINARY INJUNCTION - defts should file a proposed plan to comply with this Court's injunction - CHJ, FIELDS, PIERCE/ LEWIS & BLAIR
5/18/81	136	ORDER DENYING APPLICATION FOR STAY PENDING APPEAL - deft's & intervenor's application for stay DENIED - CHJ, FIELDS, PIERCE/LEWIS & BLAIR

5/18/81	137	NOTICE OF APPEAL (City of Memphis-Defendants-Appellants)
5/18/81	138	NOTICE OF APPEAL (Firefighters Local Union No. 1784-defendants-intervenor-appellants
5/19/81	139	REPORTER'S TRANSCRIPT - Preliminary Injunction Hearing Friday, May 8, 1981 - 1 vol.
5/19/81	140	REPORTER'S TRANSCRIPT - Oral Ruling of Court Friday, May 8, 1981 - 1 vol.
6/22/81	141	MOTION FOR ADDITIONAL RELIEF PURSUANT TO THE MAY 8, 1981 PRELIMINARY INJUNCTION WITH SUPPORTING MEMORANDUM
6/23/81	142	ORDER - deft's enjoined from applying seniority policy insofar as it will decrease the percentage of blacks in positions of Fire Alarm Operator I, Fire Prevention Supervisor & Clerk Typist - defts shall file proposed plan to comply with Court's 5/8/81 Injunction no later than 6/25 & hand deliver plan to pltf's counsel - If pltfs' object to plan then hearing will be held 6/26 at 2:00 pm to hear objection & rule whether plan complies with Court's Injunction - CHJ, FIELDS, BLAIR, PIERCE & BRITT
6/26/81	143	ORDER EXPANDING PRELIMINARY INJUNCTION - Court finds that deft's proposed plan for conducting layoffs is in accordance with preliminary injunc-

		tion of 5/8/81 & is approved - Fire Dept personnel to be laid off or reduced in rank pursuant to deft's proposed plan have been notified & additional notice is not required - defts are enjoined from applying the seniority policy proposed in conducting layoffs or reductions in rank insofar as doing so will decrease the percentage of blacks in position of Operator I, Fire Prevention Supervisor & Clerk Typist - CHJ, FIELDS, PIERCE/BRITT & BLAIR
8/25/81	144	REPORTER'S TRANSCRIPT "Hearing On Plaintiff's Motion For Additional Injunctive Relief" - 1 vol. (orig. only) - to be mailed as supplement to record now on appeal

IN THE
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT
OF TENNESSEE
WESTERN DIVISION

No. C-79-2441

Comp to C-77-2104

FRED L. JONES,
Plaintiff,

vs.

MEMPHIS FIRE DEPARTMENT; ROBERT W. WALKER, Director of Fire Services; THE CITY OF MEMPHIS; JOSEPH SABATINI, Director of Personnel for the City of Memphis,
Defendants,

and

FIREFIGHTERS LOCAL UNION NO. 1784,
Intervenor-Defendant.

DOCKET SHEET

DATE	NR.	PROCEEDINGS
6/19/79	2	COMPLAINT.
7/31/79	8	ANSWER OF DEFENDANTS

(Filed February 16, 1977)

IN THE
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT
OF TENNESSEE
WESTERN DIVISION

No. 77-2104

CARL W. STOTTS, Individually, And On Behalf Of All Others Similarly Situated,
Plaintiffs,

vs.

MEMPHIS FIRE DEPARTMENT; ROBERT W. WALKER, Director of Fire Services; THE CITY OF MEMPHIS; JOSEPH SABATINI, Director of Personnel For the City Of Memphis,
Defendants.

COMPLAINT

1. This is a class action brought pursuant to §706 (f)(1) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e-5(f)(1), and pursuant to 42 U.S.C. §1981, and 42 U.S.C. §1983, to redress discrimination on grounds of race in terms and conditions of employment on behalf of the named plaintiffs and all others similarly situated. The action asserts claims of violations of rights secured by §703 of Title VII, 42 U.S.C. §2000e-2, and by 42 U.S.C. §1981, and by 42 U.S.C. §1983, and seeks a declaratory judgment, pursuant to 28 U.S.C. §§2201, 2202, and preliminary and permanent injunctions. This Court has jurisdiction pursuant to §706(f)(3)(4) of Title VII,

42 U.S.C. §2000e-5(f)(3), and pursuant to 28 U.S.C. §1343 (3)(4).

2. Plaintiff, Carl W. Stotts, is a black citizen and is a resident citizen of Memphis, Shelby County, Tennessee.

3. The Memphis Fire Department at all times mentioned herein was and is the department of government of the City of Memphis, charged with fire protection responsibilities of the City of Memphis.

4. Robert W. Walker is employed by the defendant Memphis Fire Department as its Director of Fire Services. In this capacity, he is the chief executive officer of the defendant Memphis Fire Department.

5. The City of Memphis is a municipal corporation organized and existing under the laws of the State of Tennessee. The city, pursuant to law, operates the Memphis Fire Department.

6. Defendant Joseph Sabatini is Director of Personnel for the City of Memphis, and in said capacity, also formulates policies governing employees of the City of Memphis, and of said defendant Memphis Fire Department.

7. The plaintiff brings this action on his own behalf and on behalf of all others similarly situated pursuant to Rule 23(a)(b)(2) of the Federal Rules of Civil Procedure. The class which the plaintiff represents is composed of all black persons who are employed, who might be employed, and who have applied for employment with the defendant, and who should have been promoted by the defendant, but for the policies and practices of discrimination on the basis of race alleged herein, and those persons who have been, and continue to be or might be adversely affected by the policies and practices complained

of herein. There are common questions of law and fact affecting the rights of this class who are, and continue to be limited and discriminated against in ways which deprive and tend to deprive them of equal employment opportunities and otherwise adversely affect their status as employees or applicants for employment because of their race. These persons are so numerous that joinder of all parties is impracticable. A common relief is sought. The interests of said class are adequately represented by the plaintiff. The defendants have acted or refused to act on grounds generally applicable to the class.

8. Plaintiff would show that he was hired by the City of Memphis as a candidate for the Memphis Fire Department on July 11, 1955. He presently holds the position of Fire Fighting Captain.

9. Plaintiff avers that he has been denied promotions to ranks for which he is qualified solely because of his race. Plaintiff avers that white members of the Memphis Fire Department have been promoted to higher positions within the Fire Department even though they are less qualified than plaintiff. Because of policies and practices of defendant that were and are of a continuing nature, plaintiff has been denied his rightful rank in the Memphis Fire Department.

10. Plaintiff avers that the policies and practices of the defendant which resulted in his non-promotion are the same policies and practices which are used against members of the class which the plaintiff represents to keep black persons from being hired and promoted at the Memphis Fire Department.

11. Plaintiff would show that he filed a Complaint with the District Office of the Equal Employment Opportunity Commission in Memphis, Tennessee on or about

August 22, 1975. On January 4, 1976, plaintiff received a "Notice of Right To Sue" authorizing him to institute a civil action in the appropriate Federal District Court within ninety (90) days of receipt of said letter. This complaint is timely filed pursuant to said notice.

WHEREFORE, for the reasons stated, plaintiff prays that this Court:

1. Advance this case on the docket, order a speedy hearing at the earliest practical date, and cause this case to be in every way expedited.

2. Issue a declaratory judgment that defendants' acts, policies, practices, and procedures complained of herein violated the rights of plaintiff and the class he represents as secured under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000(2), *et seq.*, (Supp. 1972) and the Fourteenth Amendment to the United States Constitution.

3. Enter an injunction prohibiting the defendant, their agents, successors, employees, attorneys, and those in active concert participation with them, from engaging in the policies and practices complained of herein, or any other race discrimination employment practice in violation of the above specified laws.

4. Enter an Order requiring defendants to make whole plaintiff and the class he represents by providing appropriate back pay, reimbursement of lost pensions, Social Security, experience, training opportunities, an immediate promotion to the position of District Chief, and other benefits in an amount to be shown at trial.

5. Award the plaintiff costs of this action, and a reasonable attorney's fee, including out-of-pocket expenses,

and such other and further relief as this Court may deem appropriate.

Respectfully submitted,

Ratner, Sugarmon, Lucas, Salky
& Henderson
By: /s/ Richard B. Fields
G. Philip Arnold
525 Commerce Title Building
Memphis, Tennessee 38103
Attorneys For Plaintiff

(Filed March 1, 1977)

(Caption Omitted in Printing)

ANSWER OF DEFENDANTS

Come the Defendants, Memphis Fire Department; Robert W. Walker, Director of Fire Services; the City of Memphis; Joseph Sabatini, Director of Personnel for the City of Memphis, in the above-styled and numbered case and for their Answer to as much of said Complaint that they are advised is competent, relevant and material, say:

I.

Defendants deny that this Court has jurisdiction of this cause under Section 703 *et seq.* of Title VII, 42 U.S.C. Section 2000(e)-5(f)(3), under 28 U.S.C. Section 1343(3)(4), or under 42 U.S.C. § § 1981 and 1983.

Defendants further deny that Plaintiff has standing to file an action for declaratory judgment and deny that Plaintiff or the alleged class are entitled to any other relief.

II.

Defendants admit that Plaintiff Carl W. Stotts is a black citizen but demand proof that he is a resident citizen of Memphis, Shelby County, Tennessee.

III.

Defendants admit the allegations contained in Paragraph No. 3 of the Complaint.

IV.

Defendants admit the allegations of Paragraph No. 4 of the Complaint.

V.

Defendants admit the allegations of Paragraph No. 5 of the Complaint.

VI.

Defendants admit the allegations contained in Paragraph No. 6 of the Complaint.

VII.

Defendants deny all of the allegations contained in Paragraph No. 7 of the Complaint.

VIII.

Defendants admit the allegations contained in Paragraph No. 8 of the original Complaint.

IX.

Defendants deny the allegations contained in Paragraph No. 9 of the Complaint.

X.

Defendants deny the allegations contained in Paragraph No. 10 of the original Complaint.

XI.

Defendants admit that Plaintiffs filed a Complaint with the District Office of the Equal Employment Opportunity Commission in Memphis, Tennessee, on or about August 22, 1975. Defendants deny that Plaintiffs received a "Notice of Right to Sue" and, therefore, deny that the Complaint in this matter was properly filed.

XII.

Defendants deny that Plaintiff is entitled to the relief requested for in Plaintiff's Prayer for Relief in the original Complaint.

XIII.

Defendants further deny each and every allegation in the Complaint not heretofore admitted nor specifically denied.

XIV.

Defendants request as affirmative relief that they be awarded the costs of this action together with reasonable attorneys' fees and other equitable relief to which they may be entitled.

XV.

WHEREFORE, Defendants move that the Complaint heretofore filed against them be dismissed.

Respectfully submitted,

By: /s/ Clifford D. Pierce, Jr.
City Attorney

By: /s/ Edward R. Young
Assistant City Attorney

[Certificate of Service Omitted in Printing]

(Filed June 19, 1979)

IN THE
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT
OF TENNESSEE
WESTERN DIVISION

No. C-79-2441

Comp. to C-77-2104

FRED L. JONES,
Plaintiff,

vs.

MEMPHIS FIRE DEPARTMENT; ROBERT W. WALKER, Director of Fire Services; THE CITY OF MEMPHIS; JOSEPH SABATINI, Director of Personnel for the City of Memphis,
Defendants.

COMPLAINT

1. This is an individual action brought pursuant to §706(f)(1) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e-5(f)(1), and 42 U.S.C. §1983 to redress discrimination on grounds of race in terms and conditions of employment on behalf of the named plaintiff. Plaintiff seeks a declaratory judgment pursuant to 28 U.S.C. §§2201, 2202, and preliminary and permanent injunctions. This Court has jurisdiction pursuant to §706(f)(3)(4) of Title VII, 42 U.S.C. §2000e-5(f)(3), and pursuant to 28 U.S.C. §1343(3)(4).

2. Plaintiff, Fred L. Jones, is a black citizen and a resident of Memphis, Shelby County, Tennessee.

3. The Memphis Fire Department at all times mentioned herein was and is the department of government

of the City of Memphis, charged with fire protection responsibilities of the City of Memphis.

4. Robert W. Walker is employed by the defendant Memphis Fire Department as its Director of Fire Services. In this capacity, he is the chief executive officer of the defendant Memphis Fire Department.

5. The City of Memphis is a municipal corporation organized and existing under the laws of the State of Tennessee. The city, pursuant to law, operates the Memphis Fire Department.

6. Defendant Joseph Sabatini is Director of Personnel for the City of Memphis, and in said capacity, also formulates policies governing employees of the City of Memphis and of said defendant Memphis Fire Department.

7. Plaintiff would show that he was hired by the City of Memphis as a candidate for the Memphis Fire Department on November 3, 1969. He presently holds the position of Fire Fighting Private.

8. Plaintiff avers that he has been denied a promotion to the rank of Fire Inspector on August 30, 1976 for which he was qualified solely because of his race. Plaintiff avers that white members of the Memphis Fire Department have been promoted to the position of Fire Inspector even though they are less qualified than plaintiff.

9. Plaintiff would show that he filed a Complaint with the District Office of the Equal Employment Opportunity Commission in Memphis, Tennessee on or about September 24, 1976. On June 8, 1979, plaintiff received a "Notice of Right To Sue" authorizing him to institute a civil action in the appropriate Federal District Court within ninety (90) days of receipt of said letter. This complaint is timely filed pursuant to said notice.

WHEREFORE, for the reasons stated, plaintiff prays that this Court:

1. Advance this case on the docket, order a speedy hearing at the earliest practical date, and cause this case to be in every way expedited.

2. Issue a declaratory judgment that defendants' acts, policies, practices, and procedures complained of herein violated the rights of plaintiff as secured under Title VII of the Civil Rights Act of 1964, as amended 42 U.S.C. §2000(2), *et seq.*, (Supp. 1972) and the Fourteenth Amendment to the United States Constitution.

3. Enter an injunction prohibiting the defendants, their agents, successors, employees, attorneys, and those in active concert participation with them, from engaging in the policies and practices complained of herein, or any other race discrimination employment practice in violation of the above specified laws.

4. Enter an Order requiring defendants to make whole plaintiff by providing appropriate back pay, reimbursement of lost pensions, social security, experience, training opportunities, an immediate promotion to the position of Fire Inspector, and other benefits in an amount to be shown at trial.

5. Award the plaintiff costs of this action, and a reasonable attorney's fee, including out-of-pocket expenses, and such other and further relief as this Court may deem appropriate.

Respectfully submitted,

/s/ Richard B. Fields
Ratner, Sugarmon & Lucas
525 Commerce Title Building
Memphis, Tennessee 38103
Attorney for Plaintiff

(Filed July 31, 1979)

(Caption Omitted in Printing)

ANSWER OF DEFENDANTS

Come the Defendants, Memphis Fire Department; Robert W. Walker, Director of Fire Services; the City of Memphis; Joseph Sabatini, Director of Personnel for the City of Memphis, in the above-styled and numbered case and for their Answer to as much of said Complaint that they are advised is competent, relevant and material, say:

I.

Defendants deny that this Court has jurisdiction of this cause under Section 706 (f)(3)(4) *et seq.* of Title VII, 42 U.S.C. Section 2000 (e) - 5(f)(3), under 28 U.S.C. Section 1343 (3)(4), or under 42 U.S.C. § 1983.

Defendants further deny that Plaintiff has standing to file an action for declaratory judgment and deny that Plaintiff is entitled to any other relief.

II.

Defendants admit that Plaintiff Fred L. Jones is a black citizen but demand proof that he is a resident citizen of Memphis, Shelby County, Tennessee.

III.

Defendants admit the allegations contained in Paragraph No. 3 of the Complaint.

IV.

Defendants admit the allegations of Paragraph No. 4 of the Complaint.

V.

Defendants admit the allegations of Paragraph No. 5 of the Complaint.

VI.

Defendants admit the allegations contained in Paragraph No. 6 of the Complaint.

VII.

Defendants admit all of the allegations contained in Paragraph No. 7 of the Complaint.

VIII.

Defendants deny the allegations contained in Paragraph No. 8 of the Complaint.

IX.

Defendants deny the allegations contained in Paragraph No. 9 of the Complaint.

X.

Defendants deny that Plaintiff is entitled to the relief requested in Plaintiff's Prayer for Relief in the Complaint.

XIII.

Defendants further deny each and every allegation in the Complaint not heretofore admitted nor specifically denied.

XIV.

Defendants request as affirmative relief that they be awarded the costs of this action together with reasonable

attorneys' fees and other equitable relief to which they may be entitled.

XV.

WHEREFORE, Defendants move that the Complaint heretofore filed against them be dismissed.

Respectfully submitted

By: /s/ Clifford D. Pierce, Jr.
City Attorney

By: /s/ Edward R. Young
Assistant City Attorney

[Certificate of Service Omitted in Printing]

CONSENT DECREE BETWEEN PLAINTIFFS AND DEFENDANT CITY OF MEMPHIS

(Reproduced in Petitions for Certiorari of Union and City at A.59)

(Filed May 4, 1981)

(Caption Omitted in Printing)

VERIFIED APPLICATION FOR TEMPORARY RESTRAINING ORDER AND ORDER FOR DEFENDANTS TO SHOW CAUSE WHY A PRELIMINARY INJUNCTION SHOULD NOT ISSUE WITH SUPPORTING MEMORANDUM

Pursuant to F.R.C.P. R. 65, plaintiffs apply for a temporary restraining order and an order for defendants to show cause why a preliminary injunction should not issue.

On Tuesday, May 5, 1981, at 9:00 A.M. the Memphis Fire Department is scheduled to have a meeting with employees who will be given the opportunity to either voluntarily accept a layoff or be reduced in rank. Approximately 17 black lieutenants and 7 black drivers have received notification that they are among the 35 employees who are to attend this meeting. These lay-offs and reductions-in-rank are to be carried out on a seniority basis, with the employees who have the least amount of city-wide seniority to be laid off or demoted first. Because there are only 15 black drivers and 29 black fire-fighting lieutenants, a layoff or reduction-in-rank will effectively destroy the affirmative relief granted by this Court in the Consent Decree entered on April 25, 1980. Approximately 300 white drivers and 225 white lieutenants will be unaffected by the layoff and reducation-in-rank policies. Other black employees in other Fire Department bureaus may be laid off if the seniority criterion is used.

The guidelines for granting preliminary injunctive relief are outlined in *Securities & Exchange Commission v. Senex Corp.*, 534 F.2d 1240, 1241 (6th Cir. 1976):

(1) that a substantial question is at issue;

(2) that there is a possibility of success on the merits;

(3) that a balancing of injuries to the parties requires preliminary injunctive relief; and

(4) that the public interest would be served by such preliminary relief.

In a case similar to this one, the Sixth Circuit Court of Appeals upheld an injunction against the Toledo Fire Department. *Brown v. Neeb* (No. 80-3468-76, March 3, 1981) (copy attached). Although layoffs were not specifically mentioned in the consent settlement, the district

court entered an order preventing the city from laying off minority firefighters. What the Memphis Fire Department proposes to do is even more damaging to the goal of overcoming the historic under-representation of blacks by demoting black lieutenants in leadership positions. Promotional exams are scheduled for the week of June 1, 1981, and it is uncertain whether demoted lieutenants will be eligible to take the captain's exam.

For these reasons, plaintiffs request that a temporary restraining order be granted and that an order issue for defendants to show cause why a preliminary injunction should not issue after an appropriate hearing.

Respectfully Submitted,

/s/ Richard B. Fields
Ratner & Sugarmon
525 Commerce Title Building
Memphis, Tennessee 38103
Attorney for Plaintiffs

[Verification and Certificate of Service Omitted in Printing]

(Filed May 4, 1981)

(Caption Omitted in Printing)

TEMPORARY RESTRAINING ORDER

Upon motion of plaintiffs' counsel for a temporary restraining order in this cause and it appearing that class members will suffer irreparable injury if plaintiffs ultimately prevail and layoffs or reductions in rank in the Fire Department have been made;

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that defendants, their officers, agents, servants, employees, and attorneys, and all persons in active concert or participation with them are hereby restrained from laying off or reducing in rank any black employees in the Memphis Fire Department.

Plaintiffs' application for a preliminary injunction will be heard at 2 PM on the 8th day of May, 1981, in Courtroom No. 2, U.S. District Court, Memphis, Tennessee.

/s/ Robert M. McRae
United States District Judge

Date May 4, 1981

Time: 11:15 AM

(Entered May 5, 1981)

(Caption Omitted in Printing)

CONSENT ORDER ALLOWING INTERVENTION OF FIREFIGHTERS LOCAL UNION NO. 1784

This cause came on to be heard by consent of the parties; and

It appearing to the Court that the parties have agreed that Firefighters Local Union No. 1784 may intervene in this cause and file its answer to the plaintiffs' application for injunctive relief filed herein, and for good cause;

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that Firefighters Local Union No. 1784 be, and it is hereby, allowed to intervene in this cause and file its answer to plaintiffs' application for injunctive relief.

Robert M. McRae, Chief Judge

.....

Date

Ratner & Sugarmon
By Richard B. Fields
Attorneys for Plaintiffs
Clifford D. Pierce, Jr.,
City Attorney
Attorney for Defendants

Hanover, Walsh, Jalenak & Blair
By /s/ Allen S. Blair
By /s/ James R. Newsom III
Attorneys for Intervenor

(Filed May 5, 1981)

(Caption Omitted in Printing)

ANSWER OF FIREFIGHTERS LOCAL UNION NO. 1784 TO PLAINTIFFS' APPLICATION FOR INJUNCTIVE RELIEF

Comes now Firefighters Local Union No. 1784 and respectfully submits its answer to the plaintiffs' application for injunctive relief herein.

1. Firefighters Local Union No. 1784 denies plaintiffs are entitled to an injunction herein inasmuch as:

a. Plaintiffs are not likely to succeed on the merits;

b. Plaintiffs will not suffer irreparable injury under the law;

c. A balancing of the injuries to the parties requires that preliminary injunctive relief not issue; and

d. The public interest will not be served by preliminary injunctive relief.

2. Firefighters Local Union No. 1784 and its members have seniority rights entitled to protection pursuant to the City of Memphis Fire Division seniority system, which is a bona fide seniority system.

3. Should any injunctive relief be issued by the Court under 42 U.S.C. §§1981, 1983 or 2000e, et seq., it must be an injunction against all layoffs in order to protect the rights of Firefighters Local Union No. 1784 and its members under the bona fide seniority system.

WHEREFORE, Firefighters Local Union No. 1784 prays:

1. That plaintiffs' application for injunctive relief be denied and dismissed;

2. That should any injunctive relief be issued pursuant to 42 U.S.C. §§1981, 1983 or 2000e, et seq., the Court enjoin all layoffs to protect the rights of Firefighters Local Union No. 1784 and its members; and

3. For such other and further relief to which it may be entitled.

Respectfully submitted,

Hanover, Walsh, Jalenak & Blair
By /s/ Allen S. Blair
By /s/ James R. Newsom III
Attorneys for Firefighters Local
Union No. 1784
219 Adams Avenue
Memphis, Tennessee 38103
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[Certificate of Service Omitted in Printing]

(Filed May 8, 1981)

(Caption Omitted in Printing)

ANSWER OF DEFENDANTS TO PLAINTIFFS' APPLICATION FOR INJUNCTIVE RELIEF

Come now Defendants and respectfully submit their answer to the Plaintiffs' application for injunctive relief herein.

1. Defendants deny that Plaintiffs are entitled to an injunction herein inasmuch as:

a. Plaintiffs are not likely to succeed on the merits;

b. Plaintiffs will not suffer irreparable injury under the law;

c. A balancing of the injuries to the parties requires that preliminary injunctive relief not issue; and

d. The public interest will not be served by preliminary injunctive relief.

2. The layoffs and reduction in rank proposed by Defendants are to be made pursuant to a bona fide seniority system which is immune from attack under §706(h) of Title VII, 42 USC 2000e, *et seq.*, as well as 42 USC §§1981 and 1983.

3. Any complained of actions to be taken by Defendants are to be made on the basis of seniority, which actions are legal and appropriate.

4. A preliminary injunction enjoining the facially neutral layoff system on the basis of the previous consent decree is inappropriate as the parties did not negotiate, agree to or include layoff procedures within the 1980 Consent Decree that is the basis for Plaintiffs' application.

WHEREFORE, Defendants pray:

1. That Plaintiffs' application for injunctive relief be denied and dismissed; and

2. For such other and further relief to which it may be entitled.

Respectfully submitted,

Clifford D. Pierce, Jr.
City Attorney
By: /s/ Louis P. Britt III
Assistant City Attorney
Attorneys for Defendants
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Memphis, Tennessee 38103
(901) 528-2614

[Certificate of Service Omitted in Printing]

As counsel well knows, on yesterday I asked the attorneys, or at least one attorney for each party, to come over to my chambers for a very brief conference that was mainly for the purpose of determining how we were going to proceed, and to get an expression from the attorneys as to what they thought the issues were.

One of the problems with these injunction hearings centers around the fact that the lawyers don't have the usual time to develop the issues, and take discovery, and exchange information, and to call on each other to state what they think the issues are, and what they are.

So, it sometimes is very awkward. One attorney will think we are going in one direction, and the other thinks it's [4] another.

I got an idea from the lawyers—I am not sure that they were finally decided on what route they were going to take. But one of the things that I did determine, and I state before we start the hearing, that I see no area where this Court has the authority to tell the City officials that they cannot, based on their own judgment, lay off some people. Now, I don't know whether people think I'm going to tell the City that they can't lay anybody off, but I have ruled that that is not an issue.

Now, the appellate authorities, and most particularly the 6th Circuit authority, has spoken to this subject when you have a consent Decree and there has been a change of circumstances. And then the District Court can, and should be, called upon to determine whether some layoffs, and the method of laying people off is going to create discrimination, which the Consent Decree undertook to avoid.

[5] Now, I guess you might say that this Court figures, that based on the results of the hearing, the Court does have authority, if the record supports it, to tell the City that they cannot lay people off in a manner

(Caption Omitted in Printing)

PRELIMINARY INJUNCTION HEARING
FRIDAY MAY 8, 1981

[2] APPEARANCES

For the Plaintiffs:

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For Fire Fighters Local Union No. 1784:

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[3] FRIDAY, MAY 8, 1981

(2:00 o'clock p.m.)

THE COURT: Let me make some observations before I call on counsel and we proceed with the hearing.

that will perpetuate discrimination against black people. Now, it is that simple.

Now, it is not that simple to reach a decision. But that is what I feature we are going to be talking about today. And of necessity, we want to make it as brief as possible; that is, we don't have time to do a lot of investigating on the witness stand. I understand some depositions have been taken.

Now, first, I will call on counsel for the Plaintiffs. Of course, we are talking about two cases, Stotts and Jones versus the Memphis Fire Department.

MR. FIELDS: Yes, sir.

If I might, I would like to provide you with copies of the depositions. [6] They have not been filed yet, I have just received them from the Court Reporter.

THE COURT: All right.

MR. FIELDS: In case we do refer to them during the hearing.

Now, I will have three exhibits, Your Honor. And those are the three that were attached to my Supplemental Memorandum yesterday.

THE COURT: All right.

MR. FIELDS: I would like to officially file those. Unfortunately, they are stapled together.

THE COURT: You say unfortunately they are stapled together?

MR. FIELDS: Yes. All three together instead of each individually.

For purposes of this hearing, Exhibit 1 will be the Layoff Policy of May 4th.

(Thereupon, the above described document was marked as Hearing Exhibit No. 1, and the same will be found among the exhibits in the cause.)

[7] MR. FIELDS: Exhibit 2 would be the list of employees scheduled for a reduction in rank or demotion.

(Thereupon, the above described document was marked as Hearing Exhibit No. 2, and the same will be found among the exhibits in the cause.)

(Judge's secretary handing document to Clerk.)

THE COURT: I think she has got something that may have been filed since I came on the bench.

MR. FIELDS: All right, sir.

THE COURT: All right.

MR. FIELDS: And Exhibit 3, Your Honor, is my summary and print out sheet of the status of employees in the Fire Department as of 1-22-81. That is the latest information I have received from the City.

THE COURT: All right.

(Thereupon, the above described document was marked as Hearing Exhibit No. 3, and the same will be found among the exhibits in the cause.)

[8] MR. FIELDS: Now, Your Honor, would you like an opening statement, or should we go directly to the proof?

THE COURT: I would rather not have an opening statement.

MR. FIELDS: All right, Your Honor. I would like to call Mayor Chandler, then, as my first witness.

THE COURT: All right.

Now, is one of the depositions you filed that of the Mayor?

MR. FIELDS: Yes, it is, Your Honor.

THE COURT: And did you want to call him too?

MR. FIELDS: Yes, sir.

THE COURT: All right.

Mr. Mayor, would you be kind enough to come around and let us give you an oath, and ask you to testify, please.

[9] MAYOR WYETH CHANDLER,

the said witness, having been first duly sworn, was examined and testified as follows:

MR. FIELDS: Before I begin the examination, Your Honor, I'd like to use the adverse witness rule. I think the Mayor and I, we are adverse at this point.

THE COURT: You don't have to call him adverse. He is associated with the other party.

MR. FIELDS: Oh, yes, sir.

THE COURT: He is the other party. You may ask leading questions.

MR. FIELDS: All right, Your Honor. Thank you.

THE COURT: With this many people, you know, you could be misunderstood.

MR. FIELDS: Yes, sir.

THE COURT: Please proceed.

MR. FIELDS: Thank you.

Direct Examination

By Mr. Fields:

Q. Mayor Chandler, I would just like to go into the history of the layoff policy as had been adopted now.

[10] Exhibit 1, which I believe I showed you yesterday, is a copy of a layoff policy dated May 4th, 1981.

Would you explain to me how that was formulated? Was that done at your direction? A. When we first considered layoffs last year, we, of course, did layoff—and this year, have laid off several employees. We did that under an unwritten policy. We did it basically the same way that we are proposing these layoffs.

I asked Mr. Sabatini, in view of the fact that we were going to have obviously a vast number of layoffs next year on July the 1st, depending on what the Council

did, to prepare a full layoff policy that would protect the rights of the employees as far as possible, which insured them of any benefits that the City could possibly give them, and also allow us to move forward as rapidly as possible to notify those employees that on July the 1st they would be gone, and this will be the situation in their treatment.

Q. All right.

You stated in your answer that there has never been any layoffs at the City Government while you have been there; is that correct? A. Not until, I think, about thirty days, sixty days [11] ago, when we laid off some people in probation.

That was due to the fact that Attorney General Stanton cut out funds from the probation area of payments they made over at City Court. And the result was we didn't have any money.

And I think in another area where the County failed to contribute in the area of welfare, I think we did layoff some employees in that area. Both of those were done on the basis of seniority, and had been accomplished there and laid off.

Q. All right.

Now, Mr. Mayor, this policy was written up at your direction, I take it? A. At my request.

Q. At your request. A. It was presented to me for my review. I reviewed it and approved it.

Q. All right.

Now, it says that in the layoff policy that it is at your discretion what classifications are going to be laid off, you determine that. Would you explain how you determine the layoff to be had in the Fire Department? A. Well, of course, I have that broad discretion. What happened basically, is that each department of the [12] City, the Fire, Police, and all other departments, formulate a main-

tenance budget which they feel is necessary to carry out the function of their departments.

They did so this year. It came out, as I recall, to a gap between anticipated revenues and expenditures that they would need to maintain those departments, of about thirty-eight million dollars.

They went back to the drawing board, and each department draws up in a given formula, reduced service level three, two, one, etc., showing a reduction not only in the department, but each sub-department.

And police, for example, it affected uniform patrol, traffic, etc. Each department is now down at the level of reduced level one, two, or three.

The director, then, is told that he must reduce his budget. He then prioritises all of these reduced service levels. And for example, in the Fire Department, may reduce fire fighting to reduced service level two. And he may reduce gas masks or air masks to reduced level three, or whatever. He reduces his division to what he thinks he needs best to serve the people of the City.

Now, we didn't reduce the entire thirty-eight million dollar deficit, as you know. We still have, when it was submitted to the council, 18.6 million [13] dollars in deficit, which would require a seventy cent increase in taxes. We don't know what they are going to do with that. In my judgment, they may very well not pass such a tax increase, and we will be cutting further in each department, but by that formula.

In other words, the division directors will again be saying, according to our priorities, these things should be reduced. This department should be reduced to this level of service. That means twenty-five people, for example, will be laid off. At that point when he says, for example, in the Fire Department, we will be reducing five fire squadrons. I don't know that there are two privates, a

driver and a lieutenant on a fire squad, even though I believe it to be in that order. I mean just by common knowledge.

But I don't say that we are going to reduce by one lieutenant, one driver and two privates. We just say that we will reduce by five squads. And those people, whoever they may be, those reductions would be made.

Q. Well, I would like to pick up on one point that you made. There is a possibility, although it is not clear now, that there may even be more layoffs in the future? [14] A. In my opinion there is a definite possibility. The council has got the matter. I have heard rumors, you know. I don't know whether they are true or not, but they are talking about a maximum tax increase for the City somewhere in the neighborhood of thirty or forty cents. I hope that's not true because I think that would be adverse to the City, and, of course, would effect even more.

As you know, we have purposely not laid off anybody heretofore. We have used attrition to factor people out.

Q. All right.

Now, Mr. Mayor, you said that you just take your suggestions from the department heads. Are you planning on hiring any people in the City now, in any part of City Government? A. Yes. The only place that we intend to raise the number of personnel during the coming year, the number of slots, will be in the police department in the area of patroling and detective division.

I might mention one thing there. Over the years we have been working on these budgets. They really have never compared our funding of each department as compared to cities throughout the United States. And over the last year we have done that. And there were [15] two areas that stood out where we were paying a much higher percentage of our total budget in two areas than

we were in all other areas. Those were in sanitation. And I think everyone knows that. We are the only city—or were the only city—left in the country that had twice a week back door pick up. And that was costing a lot more money than other cities.

And the Fire Department. In the Fire Department, our percentage that was spent was I think—I don't remember the figures, but it seemed like twenty-two percent above the average of all of the cities of our size, comparable size, in the United States.

And the result was that we looked very intensely to see why that was true. And we found that there could be some cuts in that area.

Q. I understand. The issue is not whether they need it cut at this hearing, it is how they are done. A. All right.

Q. Okay.

Now, when you had formulated this policy, did you direct, or did you yourself consider, what the impact would be upon the black employees of the Fire Department? [16] A. I did not.

Q. Did you consider that perhaps the seniority system, as such, would have an adverse impact because for a number of years the City did not hire blacks in the department, or very few? A. No, I didn't consider that at all. In my opinion, I had never dealt with layoffs, or firings, or whatever, based on any of that.

It is my opinion that under the Consent Decree, we agreed to hire, we agreed to promote, and we agreed to do it in percentages, or what have you. And be fair and equitable, and I felt that that was fair and equitable, that I did then agree to it, consented to it.

But I certainly felt differently towards any policy that would put people out of work, put them on the street, based anything other than on the thing that has

been used in every city in this country, in every business in this country, and by the city, and in the Consent Decree since 1974, and that is the seniority policy in the union agreement, and everything else.

Q. Well, you realize that the Consent Decrees do not contain any language about layoffs? A. I think one of the Consent Decrees says seniority is one of the factors in some regard, I don't [17] know what regard it is.

Q. All right, sir.

But this is the first layoff policy that the City has ever had? A. With the exception of the few that were laid off this year, we have never had not only a policy, we have never laid anybody off.

Q. All right.

One other question, Mr. Mayor. Did you ever consider, instead of laying off people, just reducing the number of hours the individuals worked, so you wouldn't have to layoff individuals, but you might make an across the board cut. A. That may have been considered by the Fire Department. I think it would be probably—well, I don't know how it would work if you tried to shift people, especially in their twenty-four hour jobs. I'm not sure how that would work out.

Q. But you did not consider that yourself? A. No, I didn't personally consider it.

Q. All right. A. Let me add one more thing. Now, with layoffs, you are talking about how it would adversely affect people. As I understand it, and I may be wrong, but as I understand it, there will be some thirty-eight, or [18] whatever, fire fighters, for example, laid off. And of those, the majority of them would be white.

Now, there will be some kickback downs. And I know that you feel very strongly about that. At some reductions from lieutenants to drivers, and so forth, who

would impact, perhaps, blacks. I just discovered it, I didn't know about it.

But I hope that you understand, and I certainly want Judge McRae to understand, that they are not losing what they gained by the promotion to lieutenant, because they are kept on a roster, and it is absolutely almost certain that all of those people would be restored to their positions as lieutenant, they now having been bumped down, or having been bumped down because they are less senior. And being lieutenants, because they were promoted under this policy, we bump down temporarily, and in all likelihood will be back as a lieutenant maybe within six months, and certainly within a two year period.

Q. There is no guarantee of that, though, is there? A. Not a guarantee in blood, but from a historical factor of attrition, and the way the Fire Department operates under what they consider what will happen, it can be reasonably assured.

Q. Well, but you can't even assure us today that [19] there won't be further layoffs and more lieutenants won't be affected? A. I can't guarantee you that there will be any layoffs or none, because that is a decision of the council or the City of Memphis, it is not mine to make.

Q. All right.

Now, you mentioned the lieutenant. Were you given the statistics of how it would affect black lieutenants? A. I don't know the statistics. I know that it was high on the black side.

Q. Okay.

I believe that we filed with the Court today, that fifty-five percent of the black lieutenants in fire fighting would be demoted, whereas only twenty-five percent of the whites? A. I don't know those figures.

Q. Well, did you consider instead of using city wide seniority, using seniority within the rank because you have had a number of promotions within the last year? A. I did not. City-wide seniority has been used in every department. It is the agreement with the union. It has always been used and I have never considered anything else.

[20] Q. Is it your position that the agreement with the union is enforceable in a Court of Law?

MR. LEWIS: Objection, Your Honor.

THE WITNESS: I don't know whether it is or not. It is enforceable in my mind because I signed it.

MR. LEWIS: Excuse me, Mr. Mayor.

THE COURT: I don't think that is a fair question to ask the Mayor. That is not his decision.

THE WITNESS: That is for some Judge to determine.

THE COURT: Well, there is a big debate about that, and I don't know if it is really necessary to the issues in this suit.

MR. FIELDS: All right, Your Honor, That's fine.

THE COURT: All right.

MR. FIELDS: Okay. Excuse me.

(Counsel conferring.)

MR. FIELDS: That's all I have, [21] Your Honor. Thank you.

THE COURT: All right.

Mr. Blair, I think you indicated that you might have a few questions.

MR. BLAIR: If Your Honor please, at this time of this witness, I have no questions.

THE COURT: All right.

MR. LEWIS: Your Honor, I think rather than just question the witness, we are prepared to enter into a facts stipulation. I understand there may be some objection as

to the admissibility but we would propose a stipulation of fact that the 1974 Consent Decree, which the Mayor referred to in his testimony as requiring city-wide seniority and personnel action at paragraph 6(a). This is a case styled *United States of America v. City of Memphis.* Civil Action No. C74-286, provides at that paragraph: It says, "The City shall for all purposes [22] of promotion, transfer, and assignment, compute the seniority of the persons in the affected class, as defined in paragraph five—" which is black city employees—'As the total seniority of that person with the City.'"

MR. FIELDS: Your Honor, I would object to that since it says absolutely nothing about layoffs, and it is not in any conflict with the Decree we've entered.

MR. BLAIR: May it please Your Honor, we will join in that stipulation.

MR. FIELDS: Oh, I stipulate that is what it says, Your Honor, I just object to its admissibility in this hearing.

THE COURT: Well, all right.

Maybe we are getting into a technicality here. I consider that the whole Consent Decree is of necessity part of this record.

Now, I don't want to get into semantics problem about what is admissible, but I overrule whatever [23] objection Mr. Fields is making. This, of course, is what you all can argue.

But if anybody doubts this, I think you ought to make the consent agreement a part of the record. Isn't this filed in the same cause?

MR. BLAIR: It is in a different cause number, but it is referred to in the Consent Decree in this cause.

MR. FIELDS: Your Honor, if I could explain.

What they are talking about is the '74 Consent Decree in Judge Wellford's Court with the Justice Department.

Any language in our Consent Decree says that there should be nothing in our Consent Decree that conflicts that with Consent Decree. That is on the basis with which the City signed that Decree.

The part Mr. Lewis read says, that in that Decree it says for the purposes of promotion, assignments, transfers.

THE COURT: All right.

[24] MR. FIELDS: They should use city-wide seniority.

But my argument is that doesn't conflict with our Decree because it doesn't say anything about layoffs, neither Decree says anything.

THE COURT: Well, that is the Decree in the city-wide matter.

MR. FIELDS: Right, that's correct, Your Honor.

THE COURT: All right.

MR. LEWIS: As Mr. Fields says, Your Honor, it specifically provides in the '80 Decree, that is at issue, this Decree is not intended to conflict with any provisions of the prior Decree. Rather, this Decree is intended to parallel and supplement the relief provided in that Consent Decree.

THE COURT: All right.

Well, I will still permit them to admit it, but I am not holding that it applies to layoffs.

MR. FIELDS: Yes, sir, thank you.

[25] MR. LEWIS: Your Honor, I guess we would then move the admission of this exhibit. I didn't anticipate this, so I hope—

MR. FIELDS: (Interjecting) That's fine.

(Referring to extra copy of document.)

THE CLERK: Exhibit 4.

(Thereupon, the above described document was marked as Hearing Exhibit No. 4, and the same will be found among the exhibits in the cause.)

THE COURT: Do you have any questions of the Mayor?

MR. LEWIS: No, Your Honor, not of this witness.

THE COURT: All right.

Thank you, sir.

THE WITNESS: Thank you, sir.

(Witness excused.)

MR. FIELDS: I would like to call Mr. Joe Sabatini.

[26] JOSEPH D. SABATINI,

the said witness, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Fields:

Q. Would you state your full name for the record, please. A. Joseph D. Sabatini.

Q. What is your position with the City of Memphis? A. Director of Personnel.

Q. All right.

How long have you been Director of Personnel? A. Since February, 1976.

Q. And Mr. Sabatini, at the Mayor's direction, as I understand it, you and your staff drew up this layoff policy; is that correct? A. That's correct.

Q. When you drew it up, did you consult with me—well, I'm sorry. Did you consider consulting with the Plaintiff in the Stotts case about its adverse impact on blacks? A. I did not.

Q. Why not? A. I felt that the historical seniority provision that were identified in the City policy, were identified [27] in the Consent Decree, were identified in various union memorandum, and in our research of

other layoff policies in the public and private sector indicated that seniority was the natural course.

Q. All right.

Did you consider any other alternative to laying off by seniority? A. No, we did not.

Q. Did you consult the union about this policy? A. Did not consult the union.

Q. Did you have conversations with them about it? A. Yes, I did.

Q. Prior to its implementation on May the 4th? A. Yes, I did.

Q. All right.

Did you consult the United States Justice Department about it? A. Did not consult, reviewed again the principles of the policy.

Q. I'm sorry, would you state that again? A. Did not consult, did in fact review the principles of the policy.

Q. Okay. But you did not review those with the Plaintiff in this case? A. That's correct.

[28] MR. LEWIS: Your Honor, I think it is inconsistent for Mr. Fields to object on the one hand to something that we introduced because there is nothing about layoffs in their Decree, and then apparently attempting with him, that because he has this Decree somehow the City was obligated to discuss layoffs with him.

And for that reason, I don't see the relevance of this line of inquiry.

MR. FIELDS: Your Honor, in our Decree, at paragraph 11(b) in the reporting, there is language that: "Should any dispute or controversy arise concerning Defendant's application of adherence to the provision of this Decree, Defendant and Plaintiff's counsel should confer with the Attorney General and seek a mutually agreeable resolution of the dispute."

I would like to go on, if I may?

THE COURT: All right.

I overrule the objection.

[29] MR. FIELDS: Thank you.

Q. (By Mr. Fields) Now, Mr. Sabatini, didn't we have a discussion a number of weeks ago about this, that we would object if seniority were used for the layoff policy because of its adverse effect on blacks? A. I believe you and I in a phone discussion on other matters did discuss the fact that the budget process indicated that layoffs were going to be necessary. It was publicized in the newspaper.

And I do believe you stated, that it would be your position that it would be other than city-wide seniority. And I believe that I stated that it would be our position, and our design, that the layoff policy should be in fact by city-wide seniority, but that that bridge would probably need to be crossed when we were able to determine the balancing effect to the bumping, to determine who was to be affected.

Q. All right. And at that time I told you about this recent decision in the 6th Circuit; is that not correct? A. You mentioned it to me, yes, sir.

Q. And I provided a copy to Mr. Pierce? I mean, do you know that? A. I think that is true, yes.

Q. All right.

[30] Now, instead of consulting any further, you decided to notify employees as of Tuesday of this week, who would be laid off and who would be bumped; isn't that correct? A. In line with our mechanics to inform employees as to the layoff policy, yes, that was scheduled for this past Tuesday.

Q. All right.

Without further consultation with Plaintiff's counsel, me? A. Excuse me?

Q. Without any further consultation with me; is that correct? A. That's correct.

Q. All right. And is this the list of employees in the Fire Department to be bumped or demoted? A. I believe this list may have been put together by the fire division, and I think that the list is accurate. But the Tuesday meeting was the meeting of those people that were being affected in terms of their position was being abolished or eliminated in the next year's budget.

If that is consistent with this list, then that is true.

Q. Well, we will get further testimony about that.

[31] My understanding, the Tuesday meeting was with everybody affected by the layoff policy, not just those to be abolished, but those to be bumped as well? A. I believe that's true.

Q. Okay.

Mr. Sabatini, do you remember what the percentage of blacks in the Fire Department was in 1970—

THE COURT: (Interjecting) Excuse me. What is that exhibit number?

MR. FIELDS: I'm sorry, Your Honor. That is Exhibit 2.

THE COURT: What do you say it is?

MR. FIELDS: This is the list of Fire Department employees who were listed on a seniority basis that were to be bumped back to various positions.

In my Supplemental Memorandum, like you see there, there are sixteen black lieutenants on that list, one white lieutenant.

THE COURT: Now, the witness [32] said he didn't prepare this list, where did you get it?

MR. FIELDS: I got it from the Fire Department. But I thought he had something to do with that list.

THE COURT: All right. If you think it's right, but I—

MR. FIELDS: (Interjecting) Okay. Well, we will have Director Walker here.

THE COURT: All right.

THE WITNESS: If I may, Your Honor, to clarify the issue. There are other classifications in other bureaus in which layoffs are being effected. In the fire division more positions are being abolished and eliminated. And if I am not mistaken, this list includes just fire fighters; is that correct?

MR. FIELDS: That's correct.

THE WITNESS: I believe that everyone involved in the abolishment or elimination of positions was scheduled for that Tuesday meeting.

[33] MR. FIELDS: Right, I agree with that.

Q. (By Mr. Fields) Do you remember what the percentage of blacks was in the Fire Department when the '74 Consent Decree was entered? A. I do not recall it, I'm going to guess it was three or four percent.

Q. Thank you.

MR. FIELDS: Just a moment, Your Honor.

(Counsel conferring.)

MR. LEWIS: Mr. Sabatini, picking up at that point—

MR. FIELDS: (Interjecting) Excuse me, Mr. Lewis.

MR. LEWIS: I'm sorry, I apologize.

THE COURT: I thought you were through.

MR. FIELDS: I'm sorry, Your Honor.

(Counsel conferring.)

MR. FIELDS: Thank you. Go ahead.

THE COURT: Come on back.

[34] Cross Examination

By Mr. Lewis:

Q. Do you know what the percentage of black persons employed by the fire division for the City of Memphis

is at the current time? A. Approximately eleven and a half percent.

Q. Do you know what the percentage of black persons hired by the Fire Department since entry of the Consent Decree in 1974 has been in relation to the total number of hires by that division? A. Under the '74 Consent Decree, and to-date, if you were to consider all new entries into the fire division, the percentage of black would be approximately forty-six percent.

However, when you also consider rehires—and I do believe that these are two different recruiting efforts as a matter-of-fact—but when you consider the obligation and commitment under the '74 Consent Decree in terms of brand-new hires, and the recruiting efforts associated, and so forth, the black percentage is approximately fifty-six percent.

Q. So that since the Consent Decree in 1974, with regard solely to persons newly hired by the Fire Department, your testimony is that it is approximately fifty-six percent black employees? [35] A. That's correct, since 1974.

Q. With regard to promotions since the time of entry of the 1974 Consent Decree, Mr. Sabatini, do you know the percentage of promotions in the fire division that have been black persons? A. Since '74, the overall promotions in the fire division were approximately sixteen and seventeen percent black.

Q. Now, if I can direct your attention to the layoff policy that has been introduced as an exhibit. What is the basis for determining who will be laid off in that policy? A. The basis, of course, is city-wide seniority.

Q. Did that policy exist, of city-wide seniority, prior to the time that the layoff policy was drawn up? A. You mean a specific layoff policy existing?

Q. Yes, sir.

Prior to the time of the current layoff policy that was drawn up, was there a city-wide seniority policy in existence? A. In my opinion, yes, in several areas. That would include the memorandum of understanding of the various employee organizations. That includes City policy that dates back to 1973.

Q. All right, sir. [36] A. This Consent Decree, and so forth.

Q. You mentioned the union negotiations. Specifically with regard to the union that represents the fire employees, is that a matter which has been negotiated with that union? A. The city-wide seniority provision for seniority purposes was entered into the memorandum of understanding in 1975 with the local.

Q. And does it continue to be a provision of the memorandum with that union to-date? A. Yes, it does.

Q. Is there a layoff provision specifically within that agreement? A. Yes, there is a layoff language item, yes.

Q. Does that layoff language also say that seniority is the method by which persons will be selected for layoff in the event of layoffs? A. Yes, it does.

Q. Are there positions other than the ones that had been mentioned so far that are affected by the layoffs contemplated in the fire division? A. Yes, I believe there are positions eliminated or abolished in five, maybe six, of the bureaus in the fire division, which includes bureaus such as the alarm office, administration, apparatus, maintenance, fire [37] prevention.

Q. Is it currently possible to know exactly which employees may be laid off under the layoff policy? A. Not exactly. The reason for that being, is that there are—employees have an opportunity to exercise an option, once they are notified that the position is being abolished or eliminated.

That option can go anywhere from retirement, if they are eligible, to accepting a layoff, to the street. And then also there are factors that enter in between now and the end of the fiscal year, which relate to attrition, or resignations, terminations, whatever, that might affect the layoff.

Q. Mr. Fields asked about a meeting with those people that were to be affected by the layoff. If I understand what you just testified to, that would be a tentative understanding; is that correct? A. Certainly. What we were doing, was attempting to advise those people whose positions had been abolished or eliminated, what their options were. And that would carry as a tentative measure until the 26th, I believe it is, of June, which is when everything would occur, as of that date.

Q. How is that a significant date? A. That is the last pay period in this fiscal year. [38] The budget process has eliminated those positions, or abolished them for the next fiscal year, which begins July the 1st.

Q. As far as the administration is concerned, are you able to wait until June the 26th to determine what is going to happen or what layoffs, if any, will be required to balance the budget? A. In the policy we are committing to a thirty day notice. So, that does put us under a fairly tight schedule.

Q. Is that also in the memorandum of understanding with the Fire Fighters Union? A. Yes. As we develop the layoff policy, we reviewed not only the other policies, but we reviewed all agreements and found that the only one in which a thirty day requirement was there was in the fire fighters agreement. Therefore, we incorporated that into the City policy.

Q. Now, with regard to the council, is there any requirement, first of all, that the City budget be in balance?

A. There is a requirement that the City budget be in balance at the end of the fiscal year.

Q. What is the fiscal year for the City? A. From July 1st to June 30th.

[39] Q. Does the council pass on the budget submitted by the administration? A. Yes, they do.

Q. When do you anticipate that the council will be passing on the budget to be submitted? A. I believe the end of May or early June. I'm not sure when that would occur.

Q. Mr. Sabatini, do you know how many employees within the fire division will be affected as per current forecast by that department? A. I believe the figure is fifty-five positions will be eliminated or abolished, in which there are current employees.

THE COURT: There are what?

THE WITNESS: Fifty-five positions currently that are being abolished or eliminated by the budget in which there are current employees.

Of course, that figure can vary from day-to-day, depending on resignations, or turnover, other attrition factors.

Q. (By Mr. Lewis) The Plaintiff's memo in this matter refers to positions of lieutenant, driver, [40] inspector, and private. Are those in a particular bureau in the Fire Department? A. This is the fire fighting bureau of the fire division, that's correct.

Q. Of the fifty-five layoffs—

MR. FIELDS: (Interjecting) Excuse me. That isn't correct.

THE COURT: What?

MR. FIELDS: There are three that are fire fighting, and one that is fire prevention.

THE WITNESS: Repeat the question again, please.

MR. BLAIR: Was that an objection or is Mr. Fields testifying?

THE COURT: Well, I think he is just helping, I guess.

MR. LEWIS: If we are corrected, we are corrected. Are we corrected?

THE WITNESS: Repeat the question, please.

Q. (By Mr. Lewis) What I asked was with regard to lieutenants, drivers, and privates, and inspectors, is that all one bureau? A. Inspectors are in fire prevention.

Q. But the other three are in fire fighting? [41] A. The other three are in the fire fighting bureau.

Q. How many of the fifty-five total within the Fire Department division that are contemplated for layoff are included in the fire fighting bureau? A. If my figures are correct, I believe there will be about forty positions abolished or eliminated in fire fighting.

Q. Do you know how many inspectors are anticipated to be affected by the layoff? A. I don't recall that exact figure. I believe the inspectors were two, I'm not sure.

Q. So, if your surmise is correct, there, there are thirteen people outside of the classification that I have mentioned that will also be affected by the layoff? A. Yes. There are employees in the alarm office. There are employees in fire apparatus, maintenance, and other bureaus.

Q. Mr. Sabatini, do you have any information regarding the historical attrition rate within the fire division among employees? A. The specifics by classification, I do not recall. But I am aware that since January of '78, there have been eighty positions that have turned over in the fire [42] division.

Q. Is that eighty positions total, or eighty positions above a certain level? A. That is eighty positions above, if I recall correctly, above the lieutenant level.

Q. Could that be lieutenant and above? A. It could be. I recall the eighty, but by classification, I am really not sure of.

Q. Mr. Fields asked you about a conversation with the Justice Department regarding the proposed layoff policy. Did you have such a conversation? A. Yes, I did. We happened to be—Mr. Pierce and I happened to be in Washington on the 1974 Consent Decree business. We had a discussion with Mr. Gerald George about the fact that it was inevitable that we were going to be laying off people. And there was discussion about that. We highlighted the principles of the layoff policy as it was, and the stage was designed at that time.

Q. Did you inform Mr. George that the layoffs were contemplated on the basis of city-wide seniority? A. Yes, I did.

Q. Did Mr. George, on behalf of the Justice Department, pose any objections to the contemplated layoffs? [43] A. He did not.

MR. FIELDS: Objection, Your Honor. Mr. George isn't here, it's hearsay.

THE COURT: Well, I think he can ask whether he objected, but he can't go into the specifics of the conversation.

(By the Witness)

A. As I best recall, he did not object.

Q. Now, we have talked only about the fire division so far, Mr. Sabatini. Are there also layoffs contemplated within other divisions of the City? A. There currently are layoffs contemplated in all twelve of the twelve major divisions of the City.

Q. Is there any division without regard to the size of your current employee complement of those divisions, is there any other division that has as many employees being forecast for layoff as does the fire division? A. Per

my current calculations, the Park Commission will in fact, are scheduled to reduce by fifty-five positions, which is the same as we are currently estimating in fire fighting.

[44] MR. LEWIS: May I have just a moment to confer with counsel, Your Honor?

THE COURT: Yes.

(Counsel conferring.)

Q. (By Mr. Lewis) Mr. Sabatini, you have given us the overall approximate status of the fire division, now, with regard to percentage of black employees as eleven percent. Given the fact that you have made forecast of reductions within that department, do you know what would be the result, if your forecast were accurate, as to the results of the layoff with regard to the percentage of black employees in the department once the layoffs have been completed? A. A reduction of one percent based on current calculations.

Q. Do you know how many layoffs are contemplated city wide—and let me rephrase that question, if I may. How many positions are contemplated as being abolished by the administration as part of the current year's budget? A. It is right at one thousand positions. I think nine hundred and ninety-eight, I believe, total positions.

Q. Does that include CETA positions, as well as those paid out of general city funds? [45] A. It includes CETA, it includes part-time. It includes the abolishment or elimination of currently vacant positions, and it includes the layoff of approximately two hundred and twenty people.

Q. I am going to take you step by step to where you got, if I may.

How many positions are either frozen or contemplated for layoff with regard to the beginning of the next fiscal year city wide. And when I say frozen, I mean currently there is a position there, but there is no one in it and that

position is to be eliminated? A. That figure is approximately—it is between two fifty and three hundred.

Q. All right.

You are speaking when you say two fifty and three hundred, of the number of positions that are authorized but not filled? A. That's correct.

Q. And you have already given us the number of approximately two hundred and twenty persons, city wide, that will be laid off according to the forecast? A. Those are positions that also have been abolished or eliminated in which there are employees.

Q. So, if I add those two numbers correct, as a [46] result of the reductions in the current budget, there are approximately four hundred and fifty positions, city wide, to be eliminated. A. Those are positions that are city funded positions, yes.

Q. And how many of those positions are to be eliminated from the fire division? A. I believe the figure is fifty-five.

Q. Now, that is the number that are currently filled, though? A. Yes.

Q. Okay. If you add to that the number of positions that are frozen with no one there that are to be abolished, do you know what that number would be? A. I do not recall that number, no.

Q. Okay. A. I do know that there are a significant number of vacancies that had been eliminated in the fire division, but I do not recall the numbers.

MR. LEWIS: I believe that's all, Your Honor.

MR. FIELDS: I have some questions.

THE COURT: Well, maybe Mr. Blair. Do you want to ask some [47] questions, Mr. Blair?

MR. BLAIR: It will be three questions, if Your Honor please.

THE COURT: All right.

We'll see.

(Laughter.)

MR. BLAIR: I beg your pardon, I didn't hear the Court?

THE COURT: I said we'll see if it's just three.

(Mr. Blair conferring with Mr. Lewis.)

THE COURT: That's one of them you just used up.

(Laughter.)

[48] Cross Examination

By Mr. Blair:

Q. Is the Fire Fighters Local Union No. 1784 the sole recognized collective bargaining representative of employees in the fire services division? A. It is.

Q. I would like to pass to you, and see if you can identify for the record, a copy of the 1975 memorandum of understanding and the 1978 memorandum of understanding.

(Thereupon, the above described document was passed to the witness.)

MR. FIELDS: No objection.

MR. LEWIS: No objection.

A. Yes, I can testify to this.

MR. BLAIR: If Your Honor please, I believe the last marked exhibit was No. 3.

(Clerk nodding negatively.)

MR. BLAIR: No.

THE CLERK: Four.

MR. BLAIR: Four.

I would move the 1975 contract, or whether memorandum of understanding, be admitted as Exhibit 5.

[49] THE COURT: All right.

(Thereupon, the above described document was marked as Hearing Exhibit No. 5, and the same will be found among the exhibits in the cause.)

MR. BLAIR: And the 1978 agreement be admitted as Exhibit 6.

THE COURT: All right.

(Thereupon, the above described document was marked as Hearing Exhibit No. 6, and the same will be found among the exhibits in the cause.)

MR. BLAIR: Just one moment, if Your Honor please.

(Counsel conferring.)

MR. BLAIR: That's all. That was two questions.

THE COURT: All right.

You did well, Mr. Blair.

All right. Now, do you have anymore?

MR. FIELDS: I have some redirect, Your Honor.

[50] Redirect Examination

By Mr. Fields:

Q. Now, Mr. Sabatini, you testified from examination by your counsel that forty-six percent of the hires in '74 have been black; is that correct? A. Again, there are two figures. And I believe the two are distinctly different.

Q. Forty-six, and without rehires, fifty-six? A. That's correct.

Q. Okay.

Now, we haven't done that very easily, have we Mr. Sabatini?

THE COURT: Is it with rehires or without rehires?

MR. FIELDS: Without rehires it is fifty-six percent.

THE COURT: All right.

MR. FIELDS: Rehires, you understand, men that have went off and came back on.

THE COURT: All right.

Q. (By Mr. Fields) We haven't done that very easily, have we, Mr. Sabatini? A. I think we have.

Q. All right.

[51] Have we done that in the administrative office, how many blacks have been hired there? A. Wait a minute. Are you talking about the Consent Decree?

Q. I am talking about in 1974, how many blacks have been in the administration office of the Fire Department? A. I do not recall any blacks.

Q. In fact, it was only recently that outside of fire fighting you began to hire blacks in any proportionate numbers; isn't that correct? A. That does not strike me as being anything that has happened recently.

Q. In the fire alarm office you have been hiring at the fifty percent level all of the time? A. I cannot concur with that or differ with it, I am not aware.

Q. In the maintenance shop you have been hiring at the fifty percent level all of the time? A. Again, the same response.

Q. In fact, you have never hired a maintenance mechanic—a black maintenance mechanic in the maintenance shop? A. I believe that I was referring to the performance against the '74 Consent Decree, which in my opinion [52] reflects approximately fifty-six percent black being hired against that. My reference is totally to the '74 Consent Decree.

Q. Well, let's go to just before the '74 Consent Decree. Are you aware of what the Fire Department's hiring policies were in terms of black? A. I'm not aware.

Q. Excuse me? A. I am not aware.

Q. All right.

I would like to show you and mark as an exhibit—

MR. LEWIS: (Interjecting) Your Honor, I am going to object to any matters being introduced that precede

the 1974 Consent Decree. That matter has been litigated both with that, and presumably the second Consent Decree. And for us to reopen those matters that have been settled twice, just doesn't seem to bear any relevance.

MR. FIELDS: Your Honor, the purpose of this. This is a document that is in this case, in one of the [53] pleadings, I believe in my response to a Motion for a Summary Judgment in December of 1979.

This is a list of the hiring in the Fire Department since 1950. The purpose for which it is introduced is to show what effect a seniority system has in the Fire Department if he used city wide seniority, and how blacks have been—

THE COURT: All right. I overrule the objection.

MR. FIELDS: Thank you.

Q. (By Mr. Fields) Mr. Sabatini, I would like to show you this, marked as Exhibit 7.

(Thereupon, the above described document was marked as Hearing Exhibit No. 7, and the same will be found among the exhibits in the cause.)

MR. LEWIS: Your Honor, we are prepared to stipulate to what Mr. Fields says he is trying to prove, and that is the effect of seniority. We have given the numbers, I don't know what more there is to prove.

[54] THE COURT: I don't know what you are prepared to stipulate.

MR. LEWIS: We would stipulate to those figures that Mr. Sabatini has already testified to with regard to what would be the effect, who will be laid off as a result of the application of seniority.

MR. FIELDS: Your Honor, that is fine to stipulate to. But, we are talking, we have some numbers we know right now are going to happen. Other numbers in the future may happen, as well, and I want to get into that with Mr. Sabatini. If they continue to use the city-wide se-

niority policy, and there are no layoffs and more demotions, how that is going to affect the blacks.

THE COURT: All right.

MR. BLAIR: If Your Honor please, I would just like the record to reflect that we join in the objection.

THE COURT: All right.

[55] I overrule the objection.

Q. (By Mr. Fields) All right.

Mr. Sabatini, I would like for you to look at that list. It is pretty dismal, isn't it, in terms of hiring blacks?

MR. LEWIS: We object to the form of the question, Your Honor.

THE COURT: Yes. I sustain the objection.

MR. FIELDS: I'm sorry, Your Honor.

THE COURT: Let's make it factual and not dismal, and things like that.

MR. FIELDS: All right.

Q. (By Mr. Fields) Doesn't it show there, Mr. Sabatini, that until 1977, there were very few, if any, blacks hired by the Memphis Fire Department? A. It reflects very few.

Q. All right.

In fact, between 1955 and the early 60's, there were no blacks hired; is that correct? A. According to the list, yes.

Q. Okay. And prior to 1955, there were no blacks [56] hired? A. According to the list, that's correct.

Q. All right.

Now, we talked about this one percent change that will happen if you just do these layoffs right now. But, if you continue to layoff, won't that percentage increase geometrically because most of your blacks have come on the department in recent years, and it won't affect as many whites? A. In recent years, as I think we indicated, since '74 it has been pretty even figure coming on

to the department, in fact. The percentage has been five percent in favor of blacks coming on to the department. So, it is somewhat even.

Q. Well, but your goal was fifty percent anyway? A. Yes.

Q. Under that Consent Decree, as well as this Consent Decree; right? A. That's correct.

Q. And really, you didn't start hiring a substantial number of blacks until 1977? A. That is an incorrect assumption, we didn't have a class. We had no class in the early years of the Consent Decree.

Q. Well, that is how you hire in the uniform ranks, [57] is through classes? A. It's by class, yes.

Q. Okay.

But you didn't have a class until '77—I mean, until '77? A. I believe it was '77.

Q. All right.

Now, you also had some problems with promotions during this period of time; did you not? I am specifically talking about the fire prevention bureau in 1976? A. Yes, there was a problem with the fire promotions.

Q. What happened then? A. It is my opinion that there was a reorganization of the fire prevention bureau, and additional slots were identified that were promotion slots, that when we reviewed that material in-house, as well as in my opinion, the Justice Department, we concentrated on looking at the filling of the open positions that were fairly newly created, but because of the reorganization, and therefore I failed to identify what I would refer to as the domino effect; and that is if a lieutenant is promoted to an investigator in fire prevention, then there needs to be a lieutenant promotion in fire [58] fighting. That being an example of the domino effect.

In my opinion, that is what occurred.

Q. Now, come on, Mr. Sabatini, wasn't it in fact that you forgot to tell the Justice Department about the promotion to the fire prevention bureau? A. No, I believe it has been our position, even with him, that we did in fact tell him.

Q. All right.

Could I show you a copy of the letter that he sent to you. Are you aware of this letter? A. I think so.

Q. And what was his position? A. You'll have to show me the letter.

Q. All right.

(Thereupon, the above described letter was shown to the witness.)

A. I think the letter also indicates what our position is.

Q. Which is? A. And that is, that in the reorganization of the fire prevention bureau, we failed to identify what the domino effect would be. And we have admitted to that, but at the same time we feel—Director Walker and myself both feel, that there was some notification at some point in time given to the Justice Department about [59] these promotions and the domino effect.

We failed to take it into consideration in our reporting and in our calculations as to the '74 Consent Decree. And we admit that.

Q. All right. But you don't agree with this statement, then, by Mr. George? It is attached to Exhibit 5 to Plaintiff's response to a Motion for Summary Judgment, filed October 31, 1979 in this cause.

(Reading.)

"Regarding the Fred Jones Complaint, I am concerned by the paragraph on page two of your letter of October 18, 1976, to Mr. Jones, which implies that the Justice Department approves the 1976 promotions in the Fire Department.

vention and administration, that would be abolished or laid off? A. I think there are five or six bureaus which are being affected, in addition—including fire fighting.

Q. Do you know the number of blacks who will be affected by those? A. No, I don't.

Q. Would it be safe to assume that there would be blacks in those, since you have just recently hired blacks in each of those areas? A. I think it would be a premature assumption because [62] of the number of positions affected in those bureaus. It is conceivable that come the 27th of June, no one will be laid off.

Q. How would that happen? A. Through attrition.

Q. All right. A. The same way in the fire division figures—the fire fighting figures.

Q. You mean there may be a possibility there may be no layoffs in fire fighting? A. I can't say that, but the figure is continuously changing by result of attrition.

If the position being abolished or eliminated that has a person in it, and there is a person in that same classification that resigns, or is terminated, or retires, that abolished position will in fact be eliminated, but that employee could be employed in the current position.

Q. All right.

Now, you said there are fifty-five positions affected by layoffs in the Fire Department. That doesn't include the positions affected by demotions, does it? A. I have no idea what you mean by demotions.

Q. Exhibit 2 is a list that I was provided by the [63] Fire Department. Are you familiar with that list? A. Yes.

Q. Is that a correct list of the employees? A. I believe it is for fire fighting, yes.

Q. All right.

Now, from that list, you are not talking about the fifty-five slots when you are looking at that list. The

As you know, what I approved was what I was led to believe was a group of about thirty-five to thirty-seven promotions, seven of which went to blacks. The actual number of promotions in 1976, as was only very recently discovered, was over ninety. As I wasn't aware of the actual number of promotions, I can't be said to approve [60] them. Moreover, if I had been aware of the number of anticipated promotions, including the number which were offered to black fire fighters, I would not have approved them."

But, it is your opinion that he was notified of those promotions? A. No, I did not say that. I said that Director Walker and I both recall some discussion was had.

MR. LEWIS: May I be allowed to see the letter?

MR. FIELDS: Oh, I'm sorry.

MR. LEWIS: I think in the future if counsel is going to read documents, we would like to see them too.

THE COURT: Let's move along.

MR. FIELDS: Yes, sir, I am prepared to do that.

Q. (By Mr. Fields) Now, Mr. Sabatini, are you aware that one of the reasons that the number of blacks were promoted under the Consent Decree in the Fire Prevention Bureau in 1979 was because of this omission in 1976? A. Yes.

[61] Q. All right. And if they had been promoted in 1976, they would have gotten those seniority dates, then; is that correct? A. That would be correct, yes.

Q. All right, thank you.

Now, you said that there were going to be— A. (Interjecting) I think on second thought, Mr. Fields. I believe the word—did you say omission or admission?

Q. Omission. A. Yes, sir.

Q. Okay.

Now, you said that there are also going to be positions in the alarm office, apparatus and maintenance fire pre-

fifty-five slots you are talking about are the actual layoff of personnel. If these people all chose to be bumped, that would be in addition to the fifty-five layoffs. So, the number of people effected by your policy is not just fifty-five in the Fire Department, it is at least that list plus fifty-five? A. You would have to clarify what you mean by layoff.

Q. Well, people that would be out of a job on June 26th? A. No, they would not be in addition—fifty-five in addition to this list.

Q. How many— A. (Interjecting) Fifty-five positions are being abolished or eliminated in which there are current employees. Those employees will have bumping privileges, some may take retirement, which would reduce the figure even more.

[64] Q. Okay.

Take my assumption, first. Fifty-five positions are affected. Those people can bump down, and they keep bumping until somebody is out of a job; right? A. That's correct.

Q. So, you have what you call the domino effect? A. That's correct.

Q. So, it is not just fifty-five employees that are going to be affected, it is much more because employees then will be bumped, and eventually employees then would be laid off.

I am talking about the numbers of employees affected; do you see what I am saying now? A. Yes.

Q. That is greater than fifty-five. A. As it relates to just those employees that would be laid off in terms of being out of a job. In fire fighting it is approximately forty, and I believe that twenty-five of those are white and fifteen are black.

Q. I understand that. That is out of a job. But in terms of the numbers being demoted, those aren't the numbers? A. They are not being demoted.

Q. No, I understand that. But they are not being laid off unless they choose to be laid off? [65] A. They have options available.

Q. Okay.

It is pretty obvious the option that they would take if they want to continue in their job, to be bumped back down to a lower position? A. Exercise their bumping benefits, yes, sir.

Q. Okay.

Are you talking about—now, those people are not going to be laid off, if they choose not to? A. That's correct.

Q. But if a lieutenant bumped down to a driver, then a driver bumps down to a private, then a private is going to get laid off, not that lieutenant or that driver? A. That's correct.

Q. All right.

That's all I have for Mr. Sabatini.

MR. FIELDS: Your Honor, I would like to move for the admission of Exhibit 1, 2, 3, and 7.

THE COURT: Well, I consider they are in.

MR. FIELDS: All right, sir.

THE COURT: All exhibits that had been offered, that I haven't [66] sustained an objection to, are in.

MR. FIELDS: Okay.

THE COURT: Now, are there any more questions of this witness?

MR. LEWIS: Yes, Your Honor, I have a few.

Recross Examination

By Mr. Lewis:

Q. Mr. Sabatini, I am just going to try to clarify a few things. What do you mean when you say that there was no class prior to '77, and for that reason there were no opportunities to hire persons? A. The '74 Consent

Decree requires us, basically, to hire fifty percent, if qualified, a fifty percent ratio.

And during the early years of the Consent Decree, there was not a new class hired into the Fire Fighting Bureau. That is the only way that we bring in new employees into fire fighting, other than rehires, which has other conditions.

[67] Q. So that 1977 would have been your first opportunity to hire a new employee because that was your first class? A. Yes, that's correct.

Q. With regard to whether someone who may have been promoted late would thereby be affected in terms of layoff, what is the basis on which the City is planning the layoffs? A. I'm not sure I understand your question.

Q. City-wide seniority is the basis for the policy; is it not? A. Yes.

Q. Would that city-wide seniority began when the individual was hired, or when he was subsequently promoted? A. It begins when the individual is hired.

Q. So that if someone was actually promoted in 1978, rather than 1976, would that effect him in terms of his ultimate layoff? A. Not in terms of his ultimate layoff because of his city-wide seniority.

Q. Now, are all fifty-five persons that are contemplated to be effected by the layoffs in the Fire Department, or division, lieutenants who will all bump back, or are there also other classifications of employees [68] effected? A. There are other classifications.

Q. All right.

Do those include privates? A. I believe so. I believe there are—yes. Wait a minute, I think it is sixteen or seventeen privates.

Q. So, those persons would not require any dominos to follow? A. No.

Q. What were the numbers, again, that you gave with regard to the actual forecast of those persons hitting the street as a result of the layoff? A. Approximately forty, twenty-five of which would be—excuse me.

Q. Forty fire fighters or division wide? A. Forty fire fighters. Approximately forty fire fighters that would be in the streets.

Q. How many of those fire fighters hitting the streets would be white? A. Twenty-five.

Q. How many black? A. Fifteen, based on current calculations.

Q. Do you know with regard to the other persons in the division, how many whites and blacks would be laid off? [69] A. I do not recall.

Q. Now, Mr. Fields gave you some information, apparently, with regard to a fellow with the Justice Department in 1976. Do you know what the current attitude of the Justice Department is toward the City of Memphis under their Consent Decree?

MR. FIELDS: Your Honor, that is a little beyond. He can just ask him if he had any objection.

THE COURT: Yeah, I have to—what is it that you wanted to ask him?

MR. LEWIS: Your Honor, Mr. Fields introduced a letter back in '76 complaining about something. I intend to introduce a current proposed Consent Decree, wherein the Justice Department specifically recognizes, "Significant affirmative action progress" on behalf of the City since the last—

THE COURT: (Interjecting) Well, all right. Let me say that at the time I think we got pretty far afield with that letter. It was [70] not introduced.

And the contents of it were brought into the record by Mr. Fields incorporating it in a question and asking the witness whether he agreed with it. And I regret that we

got that far involved. I think its topic might have been pertinent, but we certainly didn't need to go into the whys and wherefores of the Justice Department being advised.

The witness acknowledged that something had not been taken into consideration. And I am not really interested in the backing and filling that went on at the time.

I sustain the objection to the question that you just asked because I think that both sides could get into some good guys and bad guys opinions, you know. And I don't want to do that.

MR. LEWIS: May I have just a moment, please?

THE COURT: Certainly.

(Counsel conferring.)

[71] MR. LEWIS: That's all the questions we have.

THE COURT: Mr. Blair?

MR. BLAIR: No questions, Your Honor.

THE COURT: All right.

Let me ask some questions.

Have you still got Exhibit 2 up there?

THE WITNESS: Yes, sir.

THE COURT: What do you consider that to be?

THE WITNESS: It appears to be a list. For instance, I call your attention to the lieutenant and driver list.

THE COURT: Yes.

THE WITNESS: It appears to be a list of individuals whose positions have been abolished or eliminated by virtue of the budget who have a bumping right back to the driver's position.

THE COURT: All right.

Now, do you know who compiled that?

[72] THE WITNESS: I understand from Mr. Fields that this was compiled by the fire division.

THE COURT: Well, has anybody made a study that would trace the probable effect when a lieutenant is bumped to driver, and a driver is bumped to a private?

THE WITNESS: The City is in the process of trying—because of this particular incident—of trying to project what the ultimate result is. And at this point in time, I do not have access to that information. I am not familiar with it. I'm not sure that it has been completely developed.

THE COURT: Now, the estimate, or the testimony that you gave that follows the line that there are approximately forty people who would be laid off, twenty-five white and fifteen black, are those all privates?

THE WITNESS: Yes, sir.

THE COURT: And where did that information come from?

[73] THE WITNESS: We estimated the number of positions that would ultimately result in a layoff to the street, if I may use that term. And counting up the youngest private, from the list of the youngest private we were looking at approximately—after looking at the last few classes, we were looking at, if it were forty positions, it would be approximately twenty-five whites, fifteen blacks.

THE COURT: Is that based on an assumption that the people higher in rank would bump?

THE WITNESS: Yes, sir.

THE COURT: And ultimately all privates would—

THE WITNESS: (Interjecting) A very sketchy assumption. I was just attempting to calculate what the bumping effect would have with a private.

THE COURT: And did I understand you correctly when I understood you to say that a study is now being made to determine the overall effect, I guess [74] of the domino procedure; is that what is being done?

THE WITNESS: That's correct. Again, it is a very difficult process because the figures are changing based on attrition and other factors.

THE COURT: Well, all right.

Now, does city-wide seniority mean that if somebody in the Fire Department used to work in the Sanita-

tion Department, that his date of hire in the Sanitation Department would be his city-wide seniority date?

THE WITNESS: That's correct.

THE COURT: Do you know, realistically, whether there is any real difference for the Fire Department personnel, or do we have many people in the Fire Department who came from other departments?

THE WITNESS: In fire fighting, Your Honor, I would say that it is not a significant number.

THE COURT: Those people are trained to be fire fighters, and there [75] is probably Fire Department seniority; is that correct?

THE WITNESS: It is not true in all cases. I am familiar with some City employees who had other classification seniority, and applied for and was accepted to the Fire Department.

THE COURT: But you wouldn't think it was a large number?

THE WITNESS: No.

THE COURT: All right. Thank you, sir.

All right. You can step down.

(Witness excused.)

THE COURT: Now, do we have more proof?

MR. FIELDS: Your Honor, I had planned to call Director Walker, but I think that everything has been covered, and I have no more witnesses.

THE COURT: I didn't understand you.

MR. FIELDS: I was planning to call Director Walker, but I think [76] everything has been covered with these witnesses and I have no further proof.

THE COURT: All right.

Does the City want to—do you have proof, Mr. Lewis?

MR. LEWIS: Your Honor, we will call Director Walker for about two questions. I say that advisedly.

[77] DIRECTOR WALKER,

the said witness, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Lewis:

Q. Director Walker, you are the Director of the fire division? A. That's correct.

Q. When I asked Mr. Sabbatini if he knew the numbers of blacks and numbers of white who are not in the Fire Fighting Bureau who would be laid off under the current City forecast, he did not know. Do you know those numbers? A. I believe there are twelve additional people that are not in the Fire Fighting Bureau who will be affected by the layoff.

Q. How many of those are black persons, and how many of those are white persons, according to our forecast? A. Seven are white and five are black.

MR. LEWIS: That's all I have, Your Honor.

[78] Cross Examination

By Mr. Fields:

Q. Director Walker, you said an additional twelve employees, that those positions would be abolished? A. That's correct.

Q. All right.

Did you consider any other method rather than layoff of your personnel, for example, reduction in hours? A. No, we have not considered that at this time.

Q. Are you considering it? A. Well, we will be looking anyway possible, but at this time we have not considered anything else other than the city-wide seniority.

Q. Okay.

Now, Mr. Sabatini said that there was some kind of study being done. Are you doing a study now about what the overall effect would be on blacks in your department? A. No, sir. I know that there are some figures being generated, but I don't know what they are at this time.

Q. But you are not in charge of that? A. No, sir.

Q. Thank you.

[79] THE COURT: Where are these twelve people. I don't mean everyone of them.

THE WITNESS: Okay. Basically, there are three in the fire apparatus maintenance. There are four people in the fire alarm office. There are some people in the Fire Prevention Bureau. And I believe those are the major ones that make up the twelve.

THE COURT: Do they have rank?

THE WITNESS: Yes, sir. They have rank in their own bureau.

Now, the Fire Prevention Bureau essentially comes from the fire fighting to begin with, with some exceptions. We do have some City employees in there who are both fire and safety representatives. They are civilian employees, but most of them are promoted from the ranks of fire fighters, fire inspectors.

THE COURT: Do they have some bumping privileges?

THE WITNESS: Yes, sir. The [80] fire investigators, for example, would have the privilege to bump the fire inspectors. The fire inspectors not having previous service in the fire fighting, would have the right to bump the fire private.

THE COURT: You don't really expect a lot of people to retire between now and June 26th, do you, sir?

THE WITNESS: I believe that is a loaded question.

THE COURT: You are not considering it, are you?

THE WITNESS: I know that's a loaded question. (Laughter.)

THE COURT: All right. Forgive me, I shouldn't have said that.

THE WITNESS: Let me answer by saying that since January, 1978, we have had eighty people, from the ranks of lieutenant and above, to retire. So, anytime that a lieutenant or above retires, that means there is an opening for a lieutenant, which is the bottom of [81] the career ladder in the fire fighters.

So, if a deputy chief leaves, for example, then a promotion would be made for a deputy chief from the ranks of district chief. The district chief would be promoted to the ranks of captain, and so on down the line.

So, each time a ranking officer leaves, this opens a position for a lieutenant.

THE COURT: At this meeting that was scheduled for Tuesday, I understood that some discussion was going to be had about retirement. Is there any incentive being offered like early retirement, or anything along those lines, in view of the necessity for layoffs?

THE WITNESS: We have talked in general terms about some other incentive, but we have not developed any at this point.

We were merely calling these people to notify them of their rights, of their bumping rights and their [82] privileges because their job was being deleted.

You see, what brought this about was the seven fire fighting companies being put out of service. When you put companies out of service, this represents fifteen men, or inspectors. And these are from the ranks of captain, lieutenant, driver, and private.

THE COURT: All right. Thank you, sir.

(Witness excused.)

THE COURT: All right. Do you have other proof, Mr. Lewis?

MR. LEWIS: We have one final witness, I believe, Your Honor. Mr. Mosby.

THE COURT: All right.

[83] MARLIN L. MOSBY, JR.,

the said witness, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Lewis:

Q. For the record, please, sir, would you state your name and position with the City of Memphis? A. Marlin L. Mosby, Jr., Director of Financial Administration.

Q. And I presume that in your position as Director of Finance and Administration, you are the numbers man for the City of Memphis? A. That title has been—I have been referred to that way, yes, sir.

Q. Mr. Mosby, without getting into it in any long degree, because I think everyone in the Courtroom appreciates the financial condition of the City of Memphis. What is the reason that we are now contemplating layoffs?

MR. FIELDS: Excuse me, Your Honor. I don't know if this will be repetitive or not, but I think we have agreed that there is a need—a financial need in the City. If this is just more of that, I don't [84] know if it is necessary evidence.

MR. LEWIS: If that is in the nature of a stipulation, we accept it. I will skip over the proof on that.

THE COURT: All right.

As far as the Court is concerned, I want to make it plain that I don't consider it an issue in the hearing.

Now, I don't mean for anybody to think that this Court has made a finding on the need. And I know that has got to be a right controversial topic. And there are going to undoubtedly be some other groups that are going to—the City Council, for example, is going to have to really face up to this.

The stipulation is fine, but I do not want the record, or anybody, to think that the Court has held yea or nay on the need. That is a job for the city officials and not me.

But I agree that it is not an issue in this hearing.

[85] Q. (By Mr. Lewis) Mr. Mosby, were you involved in the budget discussions that resulted in the decision that layoffs would have to be made? A. Yes, sir.

Q. And I am going to sum that up, if I may, by saying that I assume the reason for that is that the projected revenues did not meet the projected expenses? A. Yes, sir, there were some—in the operating budget alone, there were some twenty-nine million dollar discrepancy between expenditures and revenues in money flow.

Q. Do you know what percentage of the overall operating budget of the city is made up from the fire division's budget? A. Twenty-seven percent, I believe—twenty-three point two percent.

Q. Do you know what percent of the overall City worked for, paid by the City out of general funds, is composed of Fire Department—fire division employees? A. Approximately the same number, it is right at twenty-two percent.

Q. We have already heard testimony on the fact that all divisions were effected. I don't want to reiterate that, but there is some suggestion, at least as I understand this case, that perhaps the Fire Department should [86] be exempted from those layoffs. If I am incorrect in that understanding, I won't proceed.

MR. FIELDS: Your Honor, I have never said that, and I don't know by whom it is being suggested.

THE COURT: Well, I don't consider that as being raised in the pleadings or any of the matters for this hearing.

I will say this. If somebody determines that there are not going to be any layoffs, we don't have any problem.

(Laughter.)

MR. LEWIS: I can assure you we wouldn't be here, if we were cocky about that.

Q. (By Mr. Lewis) Mr. Mosby, in this budget making projection, and we are, of course, particularly concerned with the Fire Department, what is the method that is utilized by the City? A. To develop the budget? The process is one that centers around service level. We have developed a budget process known as the alternative service level budget.

[87] We first develop a maintenance level budget, as the Mayor has said before. And then we develop alternative service levels. If you change your funding, how you would reduce your service so much per level of funding. Those different levels are submitted from the directors and reviewed by the City, and ultimately the Mayor makes the decision, based one, on the level of funding and the level of revenue available. And then we prioritise all of our service levels, and we pick those levels that are the highest priority to fund to the point that we have used all of the money.

Q. The Judge probably understands that, but I don't. A. I'm sorry.

THE COURT: I don't understand about prioritise.

Q. (By Mr. Lewis) That is what I would like for you to explain. A. In the fire division there are some, let's say six or seven activities, different things; fire fighting, fire prevention. And for each of those activities

we will develop several budgets that represent different levels of service. And then we will rank them, literally, this is our highest priority item. This is our next highest priority item, and our [88] next highest priority item, bi-level of service.

In fire fighting, in our impression, if the lowest level of service is the highest priority. And then you just come down, and you keep adding levels of service in the order of their priority or ranking. That is developed first by the division, and then it is reviewed by the Mayor, and finally arranged and presented to the Council.

So, we actually present levels of service ranked.

Q. As I understand it, if I were the fire director, or what was actually done in this case by Director Walker, was that he decided that there would be twenty-five different activities at the Fire Department that he would like ideally, to see funded? A. Yes, sir.

Q. If he had all of the money that he could spend, that is what he would do? A. Yes, sir.

Q. And then when he got into the budgeting process, he was given to understand that the City did not have all of the money, and as a result of that, some of these desirable, perhaps, activities, would have to be eliminated? A. That is correct. In his particular case there were twenty-five levels of service that he presented, [89] and they were ranked one through twenty-five.

Q. Now, how did we get to layoffs of individuals in the fire division? Was that done by picking out this person, or that person, or the next person, or was it done by eliminating some whole activity that Director Walker had on his list?

MR. FIELDS: Your Honor, I don't mind giving the information, but it is a little leading.

MR. LEWIS: It sure shortens it.

THE COURT: Get him to nod, at least.

(Laughter.)

(By the Witness)

A. It is by level of service.

Q. Okay. And when you say a level of service, again, what is it that you are referring to? A. Yeah, let me explain. In fire fighting, it may help to describe the process we went through in that particular case.

The decision was made in fire fighting, basically, that we did not want to close companies or close stations, but that we had to cut back. And we identified that there were seven companies in the City that could be [90] eliminated before we would close a station.

So, one level of service that was provided was to eliminate those seven companies. Another level of service below that was actually to eliminate five more companies, which would have closed three stations. We ranked those. The ranking was such that closing stations had a higher priority and was funded. Not funding companies, seven companies, was of a lower priority and was not funded.

So, we identified companies. The impact that those companies would have on the level of service. That was presented as a level of service. In this particular case there were actually two of them, two at different levels. And then they were not funded.

Q. All right.

So, when you did away with seven companies, you did away with X number of positions; is that correct? A. Not only the position, you did away with the fuel cost associated with that. You did away with any capital expenditures that might have been associated with it, utilities. It was looked at as a unit, as all of the cost that were associated with that unit are presented in line.

Q. So, that when we are speaking of layoff, it affects the City budget not only in terms of the [91] individuals who might ultimately be laid off, but also the equipment that they used, the gas that they would utilize over the course of the year, and so forth. A. Exactly, and then those are all included together.

Q. And it was on that basis that it was determined that the various positions would be eliminated? A. That is correct.

MR. LEWIS: That's all.

THE COURT: All right.

Mr. Fields?

MR. FIELDS: No questions, Your Honor.

MR. BLAIR: No questions, Your Honor.

THE COURT: All right. Thank you, sir.

(Witness excused.)

THE COURT: Any more proof from the City?

MR. LEWIS: No, Your Honor.

THE COURT: Mr. Blair, do you intend to offer any proof?

MR. BLAIR: No, Your Honor.

THE COURT: All right.

What I would like to do is take [92] a short break. We sent word for the air conditioning people, and the man just came in back there and left. I wish I had stopped him and enjoined him to do something.

(Laughter.)

THE COURT: The cooling over here is not very good, but when you bring this many people in, it gets worse. And I am sorry, but with all of the authority I have, I don't have the authority to keep the place cool.

But I do think that we ought to break up for about five minutes. This is a large crowd. And then I want to come back and I want counsel to present their arguments.

I will say that I have not had an opportunity to familiarize myself with all of the briefs. So, I am not restricting you. At the same time, I don't want repetition. But some of these things were filed very late and there is quite a bit to cover for a [93] short notice.

So, let's take just about five minutes, Ginny.

THE COURT: All right.

(Recess.)

You may proceed, Mr. Fields.

(Closing argument of counsel.)

THE COURT: All right.

I'm going to announce my findings orally at this time and ask that proposed findings be drafted and available for me when I return to the City a week from tomorrow.

(Oral ruling of Court.)

THE COURT: Anything else?

(No response.)

THE COURT: Mrs. LaFon, you may adjourn Court.

(Adjournment.)

CERTIFICATE

I, Sharlyn A. Phillips, do hereby certify that the foregoing ninety-three (93) pages, to the best of my knowledge, skill and ability, are a true and correct transcript of the proceedings on May 8, 1981, at Memphis, Tennessee.

/s/ Sharlyn A. Phillips
Sharlyn A. Phillips
Notary Public at Large
For the State of Tennessee

This 18th day of May, 1981.

My Commission Expires:
February 23, 1983.

HEARING EXHIBIT 1

CITY OF MEMPHIS

INTER-OFFICE
MEMORANDUM

TO: CITY EMPLOYEES

DATE: May 4, 1981

FROM: Joseph D. Sabatini
Director of Personnel

SUBJECT: Layoff Policy

Attached is a copy of the City of Memphis Layoff Policy. The purpose of this policy is to provide uniform guidelines to follow when a layoff of City employees becomes necessary.

The Layoff Policy was promulgated by the Director of Personnel, reviewed and approved by the Mayor, the Chief Administrative Officer, and the Division Directors of the City of Memphis. This policy has also been reviewed and approved by the Memphis City Council Personnel Committee and will be a part of the rules and regulations of the City of Memphis.

We regret that an action of this type is necessary but, in our opinion, the guidelines incorporated in the attached policy will ensure an orderly and fair process of layoff.

/s/ Joe D. Sabatini

es
Attachment

I, ..., (please print full name) the undersigned, an employee of the City of Memphis, do hereby acknowledge receipt of the City of Memphis Layoff Policy on this date.

.....

Employee's signature

.....

Date

.....

Social Security Number

(Return to Employee Services Bureau, Personnel Division)

April 29, 1981

CITY OF MEMPHIS
LAYOFF POLICY

POLICY STATEMENT

A layoff shall be defined as an interruption of continuous employment, without prejudice to an employee, caused by a reduction in the work force due to a reduction in operational funding levels, lack of work or other changes in conditions, functions, or organization of City Government. In order to provide a level of service to the citizens of Memphis, a layoff will not occur unless deemed appropriate by the Mayor.

The Mayor has the sole authority to determine those classifications, their locations and the number of positions within that classification that are to be abolished, reduced or frozen.

Once the Mayor determines that conditions exist necessitating a layoff, the Mayor shall appoint a Layoff Committee to administer this layoff policy. The Committee shall be chaired by the Director of Personnel or his designee and shall be made up of four City Division Directors and/or their designees. In any dispute or interpretation regarding this layoff policy, the Layoff Committee shall review and make recommendations for settlement to the Chief Administrative Officer whose decision will be final.

If there is a conflict or inconsistency between the provisions of this policy and federal, state, local mandates or laws, or provisions of existing Memoranda of Understanding, the discrepancy shall be reviewed by the Layoff Committee and a recommendation made to the CAO for final disposition.

In the event that a layoff should become necessary, the following guidelines herein described shall prevail unless amended by the Mayor.

PROCEDURE

The Layoff Committee shall observe the following guidelines:

1. When a layoff occurs, requests for voluntary layoff within the affected classifications and from the appropriate work unit will be considered and granted at the discretion of the appropriate Division Director. Employees who volunteer to take layoff shall not be eligible for involuntary retirement benefits, but will be eligible for unemployment compensation benefits.
2. When practical, employees shall be given thirty (30) calendar days notice prior to being laid off.

3. Seniority Determination

A. Layoffs shall occur within a classification, based upon city-wide seniority which shall be determined on the basis of actual date of continuous service from the latest date of permanent employment. Based upon city policy and recorded documentation and approval that accepts seniority credit at the time of transfer from other specific governmental agencies, that seniority shall be included in the determination of the employee's city-wide seniority. Upon completion of the initial probationary certification in a city-funded position, all continuous CETA/PSE and other grant time shall be in the calculation of employee's city-wide seniority, provided the employee has obtained permanent status in a city-funded position.

B. When an employee's position in a given classification is abolished or eliminated, the employee occupying that position shall have the right to bump the least senior employee within that classification city-wide, or go on layoff status. The senior employee exercising such bumping rights shall assume the duties, responsibilities and work location of the bumped employee.

C. When two or more employees in the same classification have the same seniority date, the employee to be laid off shall be determined by the Division Director, based upon a review of the overall personnel record. If no significant difference exists, ties will be broken by the drawing of lots. If the affected employee falls under a Memorandum of Understanding

which provides for the breaking of ties, that procedure shall be utilized.

D. Employees who are unable to bump into their own classification but who have obtained permanent status in a previously held city-funded classification have the option to bump, in lieu of being laid off, the least senior employee in a city-funded position in that same classification.

(1) The senior employee shall not have had a break in service since last serving in that classification.

(2) The senior employee shall have a one-time option in which to bump. That option must be exercised within five (5) working days of notification of layoff.

(3) The senior employee shall bump into the most recently held city-funded classification in which the employee has seniority.

(4) No employee can bump into a grant-funded position.

(5) The senior employee is required to meet all current qualifications of that particular job classification.

(6) The senior employee must not have any physical or mental ailment or defect which incapacitates such employee from properly performing in that classification.

(7) Employees who opt to bump shall be paid at a rate determined by their last monthly salary in that previous job classification,

plus all normal or special adjustments that have occurred from the date they left that classification, up to and including the date that the actual bump occurred. Where a pay scale exists, the employee shall be paid the appropriate rate on the scale.

(8) Employees who are subsequently bumped due to this process shall have the same rights as defined above.

E. In exceptional cases, a Division Director may request in writing to the Layoff Committee that a particular employee with less seniority in a given classification be maintained. Such a request will be considered by the Committee if that junior employee has special job skills, specialized qualifications and/or training or other special talents, the loss of which would create a hardship in providing city services.

4. Provisional Employees

A. CETA/PSE employees who are part-time, temporary, probationary or permanent, and city complement employees who are temporary or probationary shall be separated from city employment prior to the layoff of permanent, full-time city employees in the same classification. This procedure shall prevail except when it is determined that it will in fact increase city or divisional operational costs, thus having the effect of not achieving the desired cost-effective purpose of the layoff.

B. All other grant-funded employees shall have their employment under the grant cease in conjunction with the expiration of the grant funding their position.

C. Any such grant employee who has certified seniority from a previously held city-funded position shall have the same rights granted to other permanent, full-time city employees as defined in this layoff policy, as related only to previously held city-funded certified position(s).

5. Layoff Roster

The Personnel Division/Employment Bureau shall maintain a layoff roster. This roster shall include, by classification and according to city-wide seniority, all employees who have been laid off, those who opted to bump to another classification, and those employees who are laid off when bumped.

A. Employees on layoff status may remain on the layoff roster for a period of time not to exceed twenty-four (24) consecutive months. Within said twenty-four (24) month period, the employee's employment status will have been finalized by recall, termination, resignation, or retirement.

B. Employees on the layoff roster, who have previously exercised their bumping rights and remain in city employment, shall maintain their recall rights to the classification from which the layoff occurred for a period of time not to exceed twenty-four (24) months.

C. Removal from the layoff roster which results in separation from city service shall occur when employees have:

(1) been discharged,

(2) resigned,

(3) been laid off for a period of twenty-four (24) consecutive months from the effective date of layoff,

(4) while on layoff status failed to accept an offered position in accordance with this policy,

(5) failed to report for work at the designated date and time,

(6) retired under service, involuntary or deferred retirement,

(7) been determined to have a physical or mental ailment or defect which incapacitates them from properly performing in that classification to which they were recalled.

D. Removal from the layoff roster which results in the employee becoming permanent in their current classification:

(1) been on the layoff roster for twenty-four (24) consecutive months after exercising bumping rights,

(2) failed to accept an offered position after exercising bumping rights.

6. Recall Procedure

When a job is to be filled in a given classification, it shall be offered to the most senior employee within that same classification who is on the layoff roster. Vacancies shall continue to be offered according to descending order on the roster.

A. All laid off and bumped employees who are subject to recall shall be contacted by the

Director of Personnel or his representative by certified mail to the address of record. It is the responsibility of the employee to maintain in writing a current address and telephone number with the Personnel Division/Central Records.

B. When a recall position becomes available, the recalled employee shall have ten (10) working days (Monday through Friday), from the date the letter is stamped by the post office on the Certificate of Mailing, in which to contact the Personnel Division/Employment Bureau with acceptance or rejection of the recall offer.

C. The employee on the layoff roster who is in a layoff status and who is offered the vacant position, shall accept the offer or be terminated from city service.

D. When employees, who have previously exercised their bumping rights and are currently working for the city in another classification, are offered a position in the classification from which they had been laid off and choose not to accept it, the option for that position shall be offered to the next person on the roster. In this case, that employee who chooses not to accept the position shall be removed from the layoff roster and shall be considered permanent in the current classification.

E. An employee who is on layoff status who has no bumping rights and is not currently working for the city in another classification shall be terminated from city service by failure to respond within ten (10) working days or failure to report to work as designated.

7. Non-Affected Vacancies

When a job is to be filled in a given classification where no layoff roster exists for that classification, the job may be filled by an active employee eligible for promotion or transfer.

A. If no active employee is selected, qualified employees on any layoff roster and probationary employees terminated due to the layoff shall be encouraged to apply.

B. If no active employee is selected, qualified employees on any layoff roster who make application and are relatively equal to other applicants shall be given preference.

8. Emergency/Temporary Employees

When it becomes necessary to fill a temporary position in a classification in which a layoff roster exists, the position shall be filled by first offering the temporary job to employees on the layoff roster.

A. An employee on the layoff roster who is offered a temporary position and chooses not to accept it shall not be removed from the layoff roster.

B. An employee on the layoff roster who chooses to accept a temporary position shall remain on the layoff roster. In such a case the employee shall be paid an hourly rate and receive no additional benefits, which is in accordance with city policy, while working in the temporary position. Temporary work shall have no effect on the employee's seniority, pension or layoff status.

BENEFITS

Benefit rights for employees on layoff status

1. Members of City of Memphis Pension Plan:

   A. Employees eligible for service retirement may elect to retire or go on the layoff roster.

   B. Employees with fifteen (15) or more years of creditable service whose position with the city has been abolished or eliminated may make application for involuntary retirement or go on the layoff roster.

   C. Employees with ten (10) or more years creditable service may make application for their deferred pension benefit. This would remove the employee from the layoff roster.

   D. Laid off employees may opt to leave their pension contribution on deposit for the period of time that they remain on the layoff roster or choose to accept refund of their contribution.

      (1) Employees under Article II, City of Memphis Pension Plan (members prior to July 1, 1978) who opt not to withdraw their retirement funds shall upon recall be reinstated under Article II with prior service credit.

      (2) Employees under Article VI, City of Memphis Pension Plan (members on or after July 1, 1978) who opt not to withdraw their retirement funds shall upon recall be reinstated under Article VI with prior service credit.

(3) Employees under Article II and VI, City of Memphis Pension Plan, who opt to have their contributions refunded shall upon recall be reinstated only to Article VI with no prior service credit.

(4) All benefits associated with Pension membership shall cease when employees withdraw their contributions from either Pension article.

E. Upon removal from the layoff roster, which results in termination of city employment, the employee shall be refunded his pension contribution within sixty (60) days or may elect to accept pension benefits for which the employee may be eligible.

2. Hospitalization/Life Insurance

Employees on layoff status may maintain their "Blue M" Hospitalization and Life Insurance coverage in the following manner.

A. The City will make available hospitalization and life insurance coverage during the time that the employee remains on the layoff roster. The employee and the city shall continue to pay their respective proportionate share of the cost of the insurance benefits during the first three months of layoff. Thereafter, the employee shall pay the full amount of the cost of the insurance benefits. Employees who are thirty (30) days delinquent in payment shall have their insurance benefits cancelled. Arrangement for payment of employee contributions can be made by contacting the "Blue M" Insurance office, Room 1B-22, City Hall.

B. Employees who elect not to maintain insurance coverage shall have their coverage cease. Insurance coverage will continue for thirty (30) days from the date of the last payment for cost of benefits. If such employees are returned to city employment, they shall furnish, at their cost, required evidence of insurability in order to be considered for reentry into either of the group plans.

C. Employees who elect not to continue the city's insurance program are eligible to apply for conversion coverage into a private plan. Employees must apply for conversion coverage within thirty (30) days of the last payment. Conversion coverage will be at the existing individual market rate, not at the group rate. Interested employees should contact the "Blue M" Insurance office for details.

3. On-the-Job Injury

A. Medical Benefits - employees who sustain an eligible OJI prior to being placed on the layoff roster shall be entitled to continued medical coverage under the existing OJI policy.

B. Leave Benefits - eligible employees receiving OJI leave benefits at the time they were scheduled for layoff shall have their layoff temporarily postponed until such time as their OJI leave benefits cease in accordance with existing OJI city policy. Such a condition may affect the number of employees laid off in that appropriate classification at the time of layoff and at the time the OJI employee's status is resolved.

C. OJI Half-Pay Benefits - employees receiving OJI one-half pay benefits in accordance with Council Resolution shall continue to receive such benefits as identified by that resolution. At the conclusion of the Council Resolution, all such OJI benefits shall cease according to city policy.

4. Accrued Benefits

A. Employees scheduled for layoff shall receive payment for all eligible leave (vacation, bonus days, and/or compensatory time).

B. Leave or pension benefits will not accrue while an employee is on layoff status.

5. Unemployment Compensation

Any employee who is laid off may make application for unemployment compensation benefits by applying to the Tennessee Department of Employment Security. The city shall provide a separation notice to all laid off employees.

6. Seniority

A. Seniority credit shall cease effective the date of layoff.

B. Employees shall not receive seniority credit during their layoff period.

C. When an employee is recalled from the layoff roster, the employee's service credit shall be reinstated effective the date the employee returns to the active payroll.

D. Employees who are reinstated to their pre-layoff classification shall be compensated at

their previous rate, plus any normal or special adjustments that occurred while on layoff.

7. Tuition Reimbursement

   Employees who are laid off while attending an approved course of study under the Tuition Reimbursement Program will be allowed to continue that course and receive tuition reimbursement benefits. No further reimbursement for course work will be allowed.

8. Employees on Military Leave will not be subject to layoff until the employee returns to active employment status.

HEARING EXHIBIT 2

LIEUTENANT TO DRIVER

10-23-70	1.	Ray M. Cobb B	Pumper
6-5-72	2.	Chester Anderson B	Pumper, A1, A2, A3, A7
6-5-72	3.	Dewey Harris B	Sr. Aerial, Snorkel
6-5-72	4.	Quincy D. McKay B	Pumper
10-30-72	5.	William L. Kegler B	Pumper
1-2-73	6.	Percy M. Alexander B	Sr. Aerial, Tillerman

D.O.E.		INVESTIGATOR TO INSPECTOR
6-22-68	1.	Delbert D. Fry W
11-3-69	2.	Gerald Alsup W

INSPECTOR, LIEUTENANT & DRIVERS

D.O.E.		TO BUMP TO PRIVATE
11-3-69	1.	Lt. Don J. Hulbert B
11-3-69	2.	Lt. Archie Scruggs B
11-3-69	3.	Lt. Herman E. Vaughn W
6-28-71	4.	Lt. Jesse Jones B
6-5-72	5.	Lt. Gus Bailey B
6-5-72	6.	Lt. Robert Downey B
6-5-72	7.	Lt. Raymond Lewis B
10-30-72	8.	Dr. Gary W. Hall W
10-30-72	9.	Dr. Glen Hardin W
10-30-72	10.	Dr. Joseph Hodges B
10-30-72	11.	Dr. Ronald McCarty W
10-30-72	12.	Dr. Elbert Rich B
10-30-72	13.	Lt. Ricky Tate B
12-17-72	14.	Dr. Thomas B. Seever W
1-2-73	15.	Dr. Nelson Boren W
1-2-73	16.	Dr. Robert Freeman B
1-2-73	17.	Lt. John Malone B
1-2-73	18.	Dr. Eddie Newson B
1-2-73	19.	Dr. William C. Pleasants W
1-2-73	20.	Dr. Bennie Shields B
1-2-73	21.	Dr. John Watson W
9-24-73	22.	Dr. Terrold Bilbrew B
9-24-73	23.	Insp. William Billings W
9-24-73	24.	Dr. Donald Kuhn W
9-24-73	25.	Dr. Ronald Moore B
9-24-73	26.	Dr. Brian Nance W
9-24-73	27.	Dr. Andrew Patton B
9-24-73	28.	Dr. Roger Peck W
9-24-73	29.	Insp. Allen Roberts W
9-30-74	30.	Lt. John Alsobrook B
9-26-77	31.	Insp. Ranold Williams W

HEARING EXHIBIT 4

IN THE
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT
OF TENNESSEE
WESTERN DIVISION

Civil Action No. C-74-286

UNITED STATES OF AMERICA,
Plaintiff,

vs.

CITY OF MEMPHIS, a municipal
corporation, et al,
Defendants.

CONSENT DECREE

This action was brought by the Attorney General against the City of Memphis to enforce the provisions of Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e, *et seq.*, as amended by the Equal Employment Opportunity Act of 1972 (Pub. L. 92-261, March 24, 1972); the State and Local Fiscal Assistance Act of 1972, 31 U.S.C. 1221, *et seq.*, the Fourteenth Amendment to the Constitution of the United States and 42 U.S.C. §1981. The Complaint sets forth certain allegations of the United States of America that the City of Memphis has engaged in a pattern or practice of discrimination based on race and sex in hiring and promotion within the City divisions, including the Memphis Light, Gas & Water Division. This Consent Decree resolves all issues raised by the Complaint with the City other than the employment practices of the Light, Gas & Water Division and the terms of this Decree do not apply to that Division. All issues raised by the Complaint

regarding employment practices at the Light, Gas & Water Division remain outstanding.

The City of Memphis denies it has heretofore engaged in any pattern or practice of discrimination in hiring or promotion on the basis of race or sex but realizes that certain past practices of the City may have given rise to an inference that such practice may have occurred. The City states that it has made good faith efforts to rectify racial or sexual exclusion in City employment and that since January 1, 1972, it has substantially increased blacks and women in the Police Division and blacks in the Fire Division. The City states that for the purpose of avoiding any further inference of discrimination, it has heretofore taken certain steps to increase the availability of qualified black and female employees by transfer and promotion, training programs, and career ladder programs in City employment.

For the same purpose and with the same intent the City is now willing to agree to the entry of a consent decree providing for additional measures to be taken. Both parties wish to avoid the delay and expense of litigation and desire to insure that any disadvantage to blacks and females that may have resulted from any past discrimination in obtaining employment and advancement is remedied so that equal employment opportunity will be provided to all. The City of Memphis and the United States, by agreeing to the issuance of this order, waive a hearing and finding of facts and conclusion of law on all issues raised by the Complaint with respect to employment by the City except employment at the Light, Gas & Water Division and the parties have mutually agreed to the entry of the consent decree, which shall not constitute an adjudication or admission by the City of any violation of law or findings on the merits of this case.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. The Defendant City and its officials, agents and employees and all persons acting in concert with them in the performance of City functions shall not engage in any act or practice which has the purpose or effect of unlawfully discriminating against any employee of, or any applicant or potential applicant for employment with the City of Memphis because of such individual's race or sex, it being understood that remedial actions and practices permitted by this Decree shall not be deemed discriminatory. Specifically, the Defendant City shall not fail or refuse to hire, promote, upgrade, train or assign any individual, discharge any individual or otherwise discriminate against an individual as an employee or applicant for employment with respect to compensation, terms, conditions or privileges of employment because of race or sex.

2. The provisions of this Decree are intended to cover all full-time employment with the City of Memphis, except that the goals and other affirmative relief established herein, including affected class relief, shall not apply to employment in the Memphis Transit Authority, the Memphis-Shelby County Health Department, the Memphis-Shelby County Auditorium Commission, the Mid-South Coliseum, the Memphis-Shelby County Planning Commission, the Memphis-Shelby County Airport Authority, the Memphis Housing Authority, the Board of Education of the Memphis City Schools, Memphis-Shelby County Public Library and the Memphis-Shelby County Hospital Authority, said organizations either being separate authorities or administered through the County of Shelby; and provided further that the provisions set forth in the succeeding paragraphs do not apply to part time employment unless the provision so states.

3. The purpose of this decree is to insure that blacks and women are not placed at a disadvantage by the hiring, promotion and transfer policies of the City, and that any disadvantage to blacks and women which may have resulted from past discrimination is remedied so that equal employment opportunities will be provided to all. The City has agreed that in determining whether that purpose has been achieved, an appropriate standard of comparison is the proportion of blacks and women in the Shelby County civilian labor force. The City, therefore, agrees to undertake as its long term goal in this decree, subject to the availability of qualified applicants, the goal of achieving throughout the work force proportions of black and female employees in each job classification, approximating their respective proportions in the civilian labor force. Except as otherwise provided in paragraphs 4, 10, and 15 below, the City shall, in meeting the long term goal for black employees, establish and attempt to meet an interim goal, in classifications where the long term goal has not been met, of filling at least 50% of all vacancies with qualified black applicants. The City in meeting the long term goal for women shall actively encourage female employees in clerical positions to seek transfer or promotion to those positions where the long term goal has not been met, and shall employ affirmative recruitment efforts for female applicants for those positions which are entry level classifications. Except as provided in paragraphs 4, 10, and 15, no specific interim numerical goals shall be established for women for the initial year of this Decree. After February 15, 1976, the parties shall meet with the City to determine appropriate interim goals for women for those job classifications in which the long term goal has not been met. In no event shall the City be required to hire unnecessary personnel, to hire, transfer or promote a person who is not qualified or to hire, transfer or promote a

less qualified person in preference to a better qualified person, nor shall the City apply any standard for employment which does not validly measure qualifications for that position. Compliance with interim goals established pursuant to this decree shall be measured on an annual basis except where otherwise specifically provided.

4. The City shall, for those positions such as accountant and engineer which require a professional degree, establish and attempt to achieve an initial interim goal of filling 30% of the total vacancies in such positions with qualified black and/or female applicants. The level of this interim goal shall be reviewed by the parties after February 15, 1976, on the basis of performance of the City in the period and the availability of qualified black and female applicants in these professional areas.

5. (A) Insofar as the term "affected class" is used in the provisions of this Decree, it shall include:

(1) Incumbent black full-time employees hired prior to January 1, 1972, in the Public Works and Sanitation Division, and in the Park Commission, who are in pay grades 51-52-53-54-55, except for the positions of Zoo Keeper and Auto Inspection I and II, and to include service truck and wrecker operator, and all other black incumbent employees who are employed in positions considered classified which exist below grade 9 in the City's current pay plan.

(2) Female incumbent full-time employees in position which are by job title or description clerical in nature.

The defendant agrees to furnish to the plaintiff within ninety (90) days after the entry of this decree a list of the members of the affected class by job classification and individual seniority date.

6. (a) The City shall, for all purposes of promotion, transfer and assignment, compute the seniority of a person in the affected class as defined in paragraph 5, as the total seniority of that person with the City.

(b) Except as otherwise provided in paragraphs 10 and 15 for filling vacancies in the Police and Fire Division and in supervisory positions, the following procedure shall be followed in filling vacancies under this decree:

(1) A member of the affected class shall be given the initial opportunity to fill any vacancy in the City where the person is the senior applicant who meets the minimum qualifications for the position. This preference is exercised at the written election of the applicant. An affected class member using this preference who successfully transfers to and holds a position, as defined in paragraph 8, shall be considered on the same basis as other applicants on subsequent bids, subject to 6(a) above.

(2) Where no affected class member seeks or is entitled to a vacancy as provided in (1) above the vacancy shall be filled pursuant to the procedures set forth in the City's Civil Service Ordinance and in the City's labor memoranda subject to 6(a) herein and in a manner consistent with meeting the goals set forth in the decree.

7. All members of the affected classes shall be notified of the provisions of this Decree and specifically of the opportunity to transfer and/or promote to other positions when such vacancies occur and are posted for bid by the City Personnel Division. At least ten (10) days before any such vacancies are to be filled, notices of the vacancies shall be posted at each location and in each department where a member of the affected class is employed. Ap-

pointed positions listed under Charter Section 248 (d), (e), (f), (g), and (h) are excluded from this posting requirement.

8. If a member of the affected class shall transfer or promote to a new position pursuant to paragraph 6(b)(1), the person shall be given a reasonable opportunity of up to ninety (90) days or up to six (6) months under Civil Service, as appropriate, to determine if he or she wishes to remain in the position or for the City to determine if he or she is able to perform the job. Should the person wish to relinquish the position, or the City determine that the person is not able to perform the job, the person may return to the previously-held position with the same pay as prior to transfer and without loss of seniority. Whenever such a person is determined by the City not to be qualified or capable of performing in the position, the City shall submit in its periodic reports to the United States a written statement detailing the basis for the person's removal from the position. It is agreed that nothing in this Decree shall require Defendant to keep an employee in any position after the trial period in which the employee cannot perform the assigned tasks as adequately as such tasks have generally been performed in the past or if the employee's work habits or attendance are inferior as compared with other employees doing similar work.

9. No member of the affected class who makes a lateral or downward transfer for the purpose of enhancing promotional opportunities, shall be paid at a lower rate than the rate for the job from which the person transferred, including any regular within grade increments the person would have received had the person remained on that job. A person utilizing rate retention pursuant to this paragraph who returns or is returned to the original job pursuant to paragraph 8, may utilize the right to rate retention on a sub-

sequent transfer, provided, however, that this right to rate retention may not be exercised on more than three occasions. The right to rate retention shall continue until the person has reached that level in the new department or line of progression where the rate of pay is equal to or higher than that in the previously held job classification. A transferee shall lose this privilege of rate retention if the person refuses a promotion in the new line of progression or fails to bid on a higher rate job in the new department for which he or she is eligible.

10. Subject to the availability of qualified applicants, the City will establish and attempt to achieve from the date of this decree through June 30, 1976, the following goals: An interim goal of increasing the level of black employment in uniform positions in the Fire Division by five (5) per cent of the total uniformed personnel; an interim goal of increasing the level of black employment in the Police Division by seven (7) per cent of the total uniformed personnel, and an interim goal of increasing the level of female employment in uniformed positions in the Police Division (other than parking meter patrol) by between four (4) and five (5) per cent of total uniformed personnel, it being understood that a female black employee counts in both percentages. All of said goals are subject to the anticipated budgeted vacancies in the City. The Fire and Police Divisions shall be reviewed at the close of the initial period as specified above and goals for succeeding periods will be established which will be based on filling anticipated vacancies in these divisions with black and female personnel in approximately the same manner as in the initial period. No specific numerical ratio for employment of black or female patrol officers or black fire fighters shall be established unless the City fails in its good faith attempt to meet the interim goals established pursuant to

this paragraph. The question of goals for female fire fighters will be reviewed by the parties at the end of the initial period.

11. (a) In filling vacancies in the entry level positions in the Police and Fire Divisions the City shall emphasize recruitment from among qualified members of its affected class, including establishing such programs as the joint City-IAFF recruitment and training program for firefighter applicants, recognizing that physical requirements will be a prime consideration for said positions. The City shall emphasize in all recruitment activities for the position of firefighter and police officer that these positions are available to women.

(b) There shall be no discrimination on the basis of race or sex with respect to duty assignments within the Police and Fire Divisions, except in the Police Division as may be legitimately required by the special nature of the assignment.

12. The City may maintain its current education standard and selection procedure for firefighter and police officer, provided, however, that should the City be unable to meet the goals for the Fire Division and Police Division established pursuant to paragraph 10 above, the education standard or selection procedure shall be modified to the extent necessary to meet those goals.

13. The City may continue to use on a pass-fail basis written promotional examinations for the Fire and Police Divisions. However, the City shall evaluate these examinations and promotional testing procedures during the initial year of this decree to insure that the use of these examinations will not have an adverse impact on black or female applicants. The parties agree that adverse impact will be shown if the adverse differential in the failure rate

for blacks or females is in excess of five (5) per cent. The City shall maintain records of the results of all such examinations sufficient to determine the impact on black and female applicants and shall provide this information to plaintiff within two weeks after administration and scoring of the examination.

If the parties disagree on the adverse impact of the tests, the City agrees to meet and confer with plaintiff before acting on any results. If the parties cannot agree after said conference, plaintiff may apply to the Court within thirty (30) days for the Court to resolve the matter, with the City agreeing to withhold action on any test results pending said determination.

14. The City recognizes the need to increase substantially the numbers of blacks and female sworn personnel in the ranks above fire fighter and patrol officer with the intent to reflect more nearly their proportions among the personnel of these divisions. While no specific numerical goal will be established for these positions during the period ending June 30, 1976, the City commits itself to making significant progress in increasing the number of black and female supervisory personnel. The need for such numerical goals in subsequent fiscal years will be determined by the parties after review of the performance of the City during the preceding fiscal year.

15. The City Personnel Division shall immediately review the files of all incumbent black and female employees to determine which are qualified to hold supervisory positions. These employees shall constitute a promotion pool to be augmented quarterly by other black and female employees found to be qualified. The provisions of this paragraph, however, do not apply to the rank structure in the Fire and Police Divisions.

Any black or female employee who has seniority in his or her occupational group or department equal to that of the most junior white foreman or supervisory in the same occupational group or department at the time he was promoted to a foreman or supervisor, shall become a member of the promotion pool unless the employer shall determine on the basis of a review of objective criteria of work performance and other qualifications that such employee is not qualified for supervision. In all such cases the employer shall set forth in its periodic report to the United States, in specific factual terms, the employer's reasons for such determination.

Utilizing this pool or outside recruitment as deemed appropriate by the City, the City shall adopt and attempt to achieve a goal of filling fifty (50) per cent of the total vacancies in supervisory positions with blacks and females, subject to the availability of qualified applicants.

This procedure shall be continued until such time as the number of blacks and females in supervisory positions substantially meets the long-term goals established in paragraph 3 hereof. In the filling of vacancies in supervisory positions, pool members with no supervisory experience shall be limited to filling vacancies at the first level of supervision. Nothing in this paragraph or Decree should be construed in such a way as to require the promotion of the unqualified or the promotion of the less qualified over the more qualified as determined by valid standards.

16. (a) Except as provided in paragraph 13, defendant City shall discontinue the use of all written examinations for employment and promotion except the employment and promotional tests of actual job content for positions such as typists, stenographers and similar positions. The City may continue to utilize skill tests of actual job content for other occupations until such time as a test

indicates a significant adverse impact on black or female applicants. If plaintiff believes that any such test has significant adverse impact on blacks or females, plaintiff shall so notify defendant and the parties will meet within thirty (30) days to determine whether defendant can show that the test is lawful under Title VII and the guidelines issued thereunder. If the parties are unable to resolve the matter within forty-five (45) days of notification, the matter will be submitted to the Court for adjudication. Defendant agrees that it will not act upon the result of any such test during efforts at voluntary resolution of the matter, and, resolution failing, for a subsequent period of fifteen (15) days to allow plaintiff to seek an order from the Court regarding interim utilization of the test results.

(b) Should the defendant wish to utilize written examinations for hire, promotion or transfer other than skills tests covered in (a) above, copies of the tests shall be forwarded to the plaintiff for approval at least ninety (90) days prior to the utilization of the test results, together with sufficient information including data on the validity and the relative impact by race and sex, to show that such tests are lawful under Title VII and the guidelines issued thereunder.

Defendant shall not utilize any such test results without prior written approval of the plaintiff, or, if the parties are unable to agree on the lawfulness of the test, prior approval by the Court of the use of the test results.

Nothing in this paragraph shall prevent the administration of tests on a research basis during the term of this decree, provided the results of such tests are not utilized in any manner in hiring, promotion or transfer decisions or in the evaluation of personnel, and the scores and/or relative performance of the persons tested are

kept secure, i.e. are not made known to employees other than those Personnel Division employees or consultants directly involved in the analysis of the test.

17. (a) Except as provided herein for the Fire and Police Division, the use of the education or equivalent experience requirements reviewed by the plaintiff may be continued with the parties agreed that applicants for hire, promotion and transfer will not be barred from consideration by the lack of formal education requirements. In determining eligibility for consideration for supervisory positions, satisfactory performance in the position next below the supervisory position sought, shall be deemed the equivalent of the education requirement, except where the position sought requires a college degree and requires job knowledge substantially different in nature and degree from that required in the position next below.

(b) If a dispute arises among the parties over the employer's application of job requirements to a black or female applicant, or over the requirements set out for a particular position or group of positions, they shall meet promptly to resolve the dispute. If the parties cannot agree, the matter shall be presented to the Court for resolution.

(c) The City shall submit all new job descriptions or modifications in the position requirements in current job descriptions to the plaintiff for approval at least 30 days prior to the proposed date of implementation. If plaintiff indicates disapproval of the requirement within that period, the new or modified standards shall not be utilized until the dispute is resolved by the parties, or the Court.

18. The City shall within one year of the date of this decree provide training and/or apprenticeship pro-

grams for craft positions and a training program for first level supervisory positions designed to enable members of the affected class to move into such positions. The craft training or apprenticeship programs developed pursuant hereto shall include programs for the job classifications of Heavy Equipment Operator, Carpenter, Auto Inspector, and Housing, Building, Electrical and Plumbing Inspectors. The City shall, in addition to the report provided in 21 (g) below, provide the United States with a description of the size and content of each such training or apprenticeship program at least sixty (60) days prior to its implementation, the anticipated size of the program to be determined by the nature of the program, the number of anticipated vacancies in the job classification and the requirement for meeting the interim goals for black and female employment established for these positions by this decree.

19. The City will engage in affirmative recruitment activities consistent with their obligation to take all reasonable steps to reach the goals set forth in this decree, and to insure that the City's policy of non-discrimination in hiring is emphasized to blacks and women. These recruitment activities shall include maintaining their contacts with area high schools, technical and vocational schools, and organizations such as the Urban League, the NAACP, NOW, Operation PUSH, Tennessee Department of Employment Security, and WAGES and informing them of employment opportunities in the City. In addition, where appropriate, advertising of employment opportunities shall be placed in mass media primarily directed to black and female audiences.

20. The City shall retain during the period of this decree necessary records to support the implementation of this decree. These records shall be made available to the

Department of Justice for inspection and copying upon written request.

The City will maintain the following records:

(a) A list of all organizations and schools which are contacted pursuant to paragraph 19, showing the date that any notice of job opportunity was mailed to them, the position and number of positions to be filled from that notice and the date through which applications could be received for the job which was advertised.

(b) A summary or compilation of all other recruitment efforts aimed at minorities and women, together with the date of said efforts and the names and positions of defendant's employee who made the contact and the nature of the contact.

(c) All applications and related records for all persons seeking employment with the City, including applications for transfer within each, and shall include on such applications identification of the applicant by race and sex. The records retained shall include, where applicable, copies of tests administered and the test results.

(d) All written communications between the City and applicants for both initial entrance, transfer and promotion.

(e) The list of members of the supervisory pool required by paragraph 15.

(f) Sufficient records will be maintained on part-time, temporary and seasonal employees to assure accurate and complete reports for these employees as required in paragraph 21 (h).

21. Within ninety (90) days after the entry of the Decree, and following June 30 and December 31 of each subsequent year during the term of this Decree, the City

shall report to the Attorney General the following information:

(a) A summary showing the total number of employees by race and sex in each job classification of the City.

(b) A report showing the positions for which persons in the affected class have applied, name of the person, the dates of such applications and whether or not such applications were successful. The report should also show any positions which the persons in the affected class have been offered but which they refused showing both the job offered and the dates thereof.

(c) A list of all newly hired employees indicating the name, race, sex and job classification of each since the last report was filed.

(d) A list of all persons, by job classification, to whom promotion has been offered under paragraph 15 of this Decree and whether or not that promotion has been accepted.

(e) A breakdown of the applicant flow of the City by race and sex which indicates the number of applicants by race and sex hired, rejected and pending for each job classification. A person is considered an applicant for this purpose upon filing a formal application when a job is posted and upon meeting the minimum qualifications for the position.

(f) A list of all promotions, name, race, sex and date of hire of the employee promoted and the date of the promotion.

(g) A report covering the operation of each of the training programs provided for in paragraph 19,

listing the name, race and sex of each person in the program during that reporting period, the dates of entering and where applicable the date of completion of the program for each such person, and where applicable, the name, race, sex and date of promotion for each person who having completed the training program was promoted during the reporting period into a vacancy in the craft or supervisory positions covered by the training program.

(h) A list of part time employees, to include race, sex, and job classification and term of employment.

22. Copies of this Decree shall be provided by the Plaintiff to be posted in conspicuous locations within each Division. Further, the City shall appoint an EEO officer in the Personnel Division of the City whose duties shall include:

(a) To advise black and female employees of the terms of this Decree;

(b) To receive and investigate complaints of race and sex discrimination; and to conciliate when appropriate; and

(c) To maintain a complete record of all actions taken in pursuit of the duties outlined above, including all correspondence directed to the defendant and/or any investigatory files. The individual appointed as EEO officer shall be sensitive to the issues involved in this matter and his office hours and location shall be posted conspicuously beside the Consent Decree.

23. The Court retains jurisdiction of this action for such further orders as may be appropriate. At any time

after five years subsequent to the date of the entry of this Consent Order, the City may move the Court upon 45 days notice to the plaintiff for dissolution of this decree, and in considering whether the decree should be dissolved, the Court will take into account whether the City has substantially complied with this decree and whether the basic objectives of the decree have been achieved.

.....

Judge

APPROVED:

.....

Gerald F. George
Grover G. Hankins
Naomi E. White
Attorneys for Plaintiff United States

Frierson M. Graves, Jr.
Attorney for City
of Memphis

MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF MEMPHIS, TENNESSEE AND LOCAL 1784, IAFF (EFFECTIVE 1975 TO 1978) (ARTICLE XIX) (HEARING EXHIBIT 5)

(Reproduced in Petition for Certiorari of Union at A.80)

MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF MEMPHIS, TENNESSEE AND LOCAL 1784, IAFF (EFFECTIVE 1978 TO 1981) (PREAMBLE, ART. I AND XIX) (HEARING EXHIBIT 6)

PREAMBLE

This Agreement is entered into by the City of Memphis, Tennessee, hereinafter referred to as the City or Employer, and Local 1784, International Association of Fire Fighters, hereinafter referred to as the Union.

It is the purpose of this Memorandum of Understanding to promote harmonious relations, cooperation, and understanding between the City, the Union and employees covered hereby, to insure the well being of said employees and the efficient and economical operation of the departments in which they are employed, to establish and maintain a basic understanding relative to personnel policies and procedures for the equitable and peaceful discussion and adjustment of differences which may arise, as related to wages, hours and other conditi[illegible] employment.

ARTICLE I

Recognition and Bargaining Unit

The employer recognizes the Union as a designated representative for certain employees of the Division of Fire for the purpose of conferences and meetings on wages, hours and conditions of employment to the full extent and authority provided by the Charter of the City of Memphis and the laws of the State of Tennessee.

The term "certain employees" as used herein places no limitations or restrictions on the right of an employee to belong to and be represented by the Union.

Certain employees shall mean those uniformed employees of the Division of Fire as specified in Article XXXVII — Salary. Employees in the payroll and personnel sections are excluded. Probationary employees, for the duration of the twelve (12) months probationary period, are excluded. This probationary period may be extended for not more than six (6) months when recommended by the Director of Fire and approved by the Director of Personnel and when the reasons for such extension are provided in advance to the President of the Union.

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ARTICLE XIX

Seniority Preference

SECTION 1—The City shall provide to the address of Local 1784 within ten (10) days of the signing of this Agreement a Seniority List, alphabetically by rank, showing the name, date of employment, and Citywide seniority for all employees in this bargaining unit.

SECTION 2—The City agrees to furnish to the address of Local 1784, upon request, a Division Table of organization relative to this bargaining unit showing authorized strength, assigned strength, and changes of authorized strength indicating the effective date of such change.

SECTION 3—In-Rank Transfers

A. When the Division determines the need to fill a vacancy in a classification in the Fire Fighting Bureau covered by this Memorandum of Understanding, notice of such vacancy will be posted for ten (10) calendar days on all bulletin boards. At the end of the ten (10) day notice period, all requests for in-rank transfers will be reviewed and

the vacancy will be awarded to the senior qualified employee. 1630 hours of the tenth notice day shall be the cut-off time for receiving transfer forms. An employee may exercise such transfer preference one time during a twelve (12) month period from date of transfer.

B. Employees who request such transfer and are denied such transfer and who are senior to the employee selected shall be given in writing by the District Chief the basis of the denial and suggested areas for improvement.

C. Employees transferred pursuant to Item A of this Article, in order for permanent placement, shall be required to successfully complete a sixty (60) calendar day trial period. During such trial period the Division will evaluate the employee's performance to assure that he/she performs at an acceptable level of competence in all phases of the position. Employees who fail to successfully complete the trial period may be transferred to any available opening at the Division's option. The evaluation of transferred employee's performance shall be the responsibility of the appropriate District Chief who may, at his discretion, utilize a review board that may consist of supervisors, peers, and/or subordinates who are knowledgeable of the individual's job performance. If utilized, such a board will be responsible to objectively evaluate the employee and to communicate their recommendation in writing to the District Chief. The District Chief will consider the board's recommendation when making his final evaluation.

D. In-Rank Transfer provisions shall be limited to the initial vacancy in a classification and not to openings created by the initial transfer.

E. Prior to filling vacancies with recruits, openings will be posted thirty (30) days in advance and transfer requests honored as specified above prior to the remaining openings being filled with recruits, provided however, that this policy shall not result in more than one recruit being placed on any single Company.

F. It is agreed between the parties that the above provisions related to Section 3, In-Rank Transfers, is on a trial basis for the term of this Agreement and after one year is subject to mutually agreeable changes within the Labor-Management Committee.

SECTION 4—Temporary assignments shall be for a specific duration and shall be so identified. The employee will be transfered back to his previous assignment upon the completion of the temporary assignment.

SECTION 5—Lay-Off

In the event it becomes necessary to reduce the Fire Division, seniority alphabetically shall govern lay-offs and recalls. Employees lowest in seniority shall be laid off first and shall be the last to be recalled. Members laid off shall be given thirty (30) days notice prior to the effective date of lay-off.

MEMPHIS FIRE DEPARTMENT FIRE FIGHTING CLASS (HEARING EXHIBIT 7)

(Reproduced in Petitions for Certiorari of Union and City at A.70)

ORAL RULING OF THE DISTRICT COURT

(Reproduced in Petitions for Certiorari of Union and City at A.72)

ORDER GRANTING PRELIMINARY INJUNCTION ENTERED MAY 18, 1981

(Reproduced in Petitions for Certiorari of Union and City at A.77)

(Filed May 18, 1981)

(Caption Omitted in Printing)

APPLICATION FOR STAY PENDING APPEAL ON BEHALF OF DEFENDANTS

The Defendants in the above entitled cause, respectfully move the Court pursuant to Rule 62(c) of the Federal Rules of Civil Procedure to stay execution of the preliminary injunction in the above entitled cause entered May 8, 1981, pending appeal to the Court of Appeals for the Sixth Circuit for reasons set forth in the Memorandum attached hereto.

Clifford D. Pierce, Jr.
City Attorney
By: /s/ Louis P. Britt III
Assistant City Attorney
McKnight, Hudson, Lewis
& Henderson
Suite 2222, Clark Tower
5100 Poplar Avenue
Memphis, Tennessee 38137
Telephone: 901/767-3170

[Certificate of Service Omitted in Printing]

(Entered May 18, 1981)

(Caption Omitted in Printing)

MOTION OF INTERVENOR FIREFIGHTERS LOCAL UNION NO. 1784 TO STAY INJUNCTION PENDING APPEAL

Comes now intervenor Firefighters Local Union No. 1784 and, pursuant to Rule 62 of the Federal Rules of Civil Procedure and Rule 8 of the Federal Rules of Appellate Procedure, hereby moves this Honorable Court for an order staying the injunction heretofore entered by the Court against the municipal defendants, pending the hearing and determination of defendants' appeals to the United States Court of Appeals for the Sixth Circuit from the injunction.

Intervenor Firefighters Local Union No. 1784 submits: (1) that it will likely prevail on the merits in the appeal; (2) that it will suffer irreparable injury if the stay of injunction is denied in that personnel otherwise entitled to rights conferred by the city-wide seniority system will suffer loss of wages and benefits upon layoff which may not be compensable even if the injunction issued herein is found to be invalid on appeal; (3) that other parties will not be substantially harmed by the stay, and (4) that the public interest will be served by granting the stay.

WHEREFORE, intervenor Firefighters Local Union No. 1784 prays that the preliminary injunction be stayed pending the hearing and determination of defendants' appeals to the United States Court of Appeals for the Sixth Circuit, and that intervenor Firefighters Local Union No. 1784 should be accorded such other and further relief as it may be entitled under the premises.

Intervenor Firefighters Local Union No. 1784 requests a hearing on this motion pursuant to Local Rule 8(c).

Respectfully submitted,

Hanover, Walsh, Jalenak & Blair
By Allen S. Blair
By James R. Newsom III
Attorneys for Firefighters
Local Union No. 1784
219 Adams Avenu
Memphis, Tennessee 38103
(901) 526-0621

[Certificate of Service Omitted in Printing]

(Filed May 18, 1981)

(Caption Omitted in Printing)

ORDER DENYING APPLICATION FOR STAY PENDING APPEAL

This cause came on to be heard on May 19, 1981, on Defendants' and Intervenor's Applications for Stay Pending Appeal, and it appearing to the Court that for the reasons appearing in the Order Granting Preliminary Injunction filed herewith Defendants' and Union's Application for Stay should not be granted.

IT IS ORDERED that Defendants' and Intervenor's Applications for Stay Pending Appeal be and hereby is denied.

ENTERED this 18th day of May, 1981.

/s/ Robert M. McRae
Chief Judge

APPROVED FOR ENTRY:

/s/ Richard B. Fields
Ratner & Sugarmon
Attorneys for Plaintiffs

/s/ Louis P. Britt III
Frederick J. Lewis
Office of the City Attorney
Attorneys for Defendants

/s/ Allen S. Blair
Hanover, Walsh, Jalenak & Blair
Attorneys for Intervenor

(Filed June 22, 1981)

(Caption Omitted in Printing)

MOTION FOR ADDITIONAL RELIEF PURSUANT TO THE MAY 8, 1981 PRELIMINARY INJUNCTION WITH SUPPORTING MEMORANDUM

Pursuant to this Court's Order of May 8, 1981, a preliminary injunction was granted to plaintiffs and it prohibits the disproportionate lay-offs or demotions of black employees in the positions of lieutenant, inspector, driver, and private. Subsequent to this order, counsel for plaintiffs has learned that additional positions are scheduled for lay-off and/or demotion and that black employees will be adversely affected. These positions are as follows:

	BLACK	WHITE
Fire Alarm Operator I	5	5
Home Safety Fire Representative	14	3
Fire Prevention Supervisor	1	5
Clerk Typist	3	6
Research & Development Lieutenant	1	0

We request that these classifications be added to the preliminary injunction so that blacks will not be disproportionately laid off or demoted.

Because the City has not yet filed a proposed plan to comply with the injunction, we also request that the City be ordered to file a plan no later than noon on Wednesday, June 24, 1981 with this Court and hand-deliver the plan to plaintiffs' counsel. If the plan does not meet the requirements of the injunction, then plaintiffs request a hearing be held no later than Friday, June 26, 1981, to hear objections to the plan. The plan should include the following information:

1. A designation of each position or classification to be affected by lay-offs and/or demotions;
2. The current vacancies in the Memphis Fire Department;
3. The names of individuals to be laid off or demoted; and
4. A current list of all employees in the Fire Department by name, classification, seniority date, and race.

The City has scheduled Friday, June 26, 1981, as the effective date for lay-offs and/or demotions, and, therefore, we request the above schedule be strictly adhered to by the City.

Respectfully Submitted,

/s/ Richard B. Fields
Ratner & Sugarmon
525 Commerce Title Building
Memphis, Tennessee 38103
Attorney for Plaintiffs

[Certificate of Service Omitted in Printing]

ORDER GRANTING INJUNCTIVE RELIEF IN PART ENTERED JUNE 23, 1981

(Reproduced in Petition for Certiorari of City at A.80)

ORDER EXPANDING PRELIMINARY INJUNCTION ENTERED JUNE 25, 1981

(Reproduced in Petition for Certiorari of City at A.82)

TRANSCRIPT OF HEARING BEFORE THE DISTRICT COURT ON JUNE 23, 1981 (TESTIMONY OF JOSEPH D. SABATINI)

[2] JOSEPH D. SABATINI

The said witness, having been first duly sworn, testified as follows:

MR. BRITT: Your Honor, if the Plaintiff wants to have some direct examination, since he is bringing this action, I have no objection. Or if you would rather me to conduct the examination I will.

THE COURT: All right, I want you to ask him what I want to know.

MR. BRITT: I will try to do that, Your Honor.

Direct Examination

By Mr. Britt:

Q. Would you state your name to the Court, please? A. Joseph D. Sabatini.

Q. And what is your position, Mr. Sabatini? A. Director of Personnel of the City of Memphis.

Q. And are you involved in this layoff procedure that we are talking about today? A. I am.

Q. The Court has expressed some concern over the [3] implementation of the layoff plan that the City proposes to implement under the Court's injunction, and considering that would you explain the procedure that the City intends to implement? A. Okay, I think first of all I would like to note that late in May we put a notice out on all of the bulletin boards throughout the Fire Division, pending the outcome of the litigation that there was a need and a plan to reduce force in the classifications of private, driver, lieutenant and inspector, and all people in the Division were made advised of that, and as I had had prior communication with Mr. Fields and felt that that was the best approach to put people on notice that something was going to happen as of the 26th, and that what exactly was going to happen was not yet defined.

At the same time, and through the period up to now, we continuously keep watch on each classification, the number of people in the classification.

We are prepared logistically.

We are aware that it will be a fairly difficult process, but not insurmountable. The layoff procedure has been addressed to over two hundred and fifty people so far, and with each exercise we become a little more accustomed to addressing that policy, and we feel very comfortable that starting either tomorrow afternoon or Thursday morning [9] we can approach these particular classifications and the people in them and have them identified, offer the options, to them, let them exercise those options, and have that resolved by the end of the day Friday.

THE COURT: You say approach, what do you mean by that, are you talking about some person will confer with a member of the Fire Department?

A. Where possible, where there are people on shift, we will meet with those people. First we will start contacting those people by telephone even though they may be scheduled the next day, as soon as possible, and as much on a personal basis as we can.

Again, I think that figure is somewhere around forty or fifty people which we do not see to be a major problem.

THE COURT: You think it will be Friday afternoon before you will know what person has what job?

A. Well—

THE COURT: (Continuing) Because of the bumping and other things?

A. We have a plan put together as to where to start the notification, there is a Deputy Fire Marshall who will be bouncing down somewhere in the organization, and we will come down that hierarchy, and then bouncing and bumping as we come down that hierarchy.

THE COURT: Are you in charge of this?

[10] A. Yes, sir.

THE COURT: Well, have you discussed with Mr. Britt the order the Court was asked to issue yesterday about filing a plan by Thursday morning?

A. I understood it to be Thursday afternoon but, yes, I was advised.

THE COURT: All right, what does that mean?

What kind of plan?

We had a discussion yesterday, Mr. Britt didn't think you would have the names of people who would be laid off by that time?

A. Yes, sir, I think it is a clarification of names, due to the fact of the option of the employee being affected to bump or to take retirement or to take a layoff.

And I think to get the specific names is just a mechanical process that would allow us to get these specific names.

THE COURT: But that's going to take until Friday?

A. No, sir, I don't think it will take long, I would say by the end of the day Friday each of these employees will have the opportunity to exercise their option and know where to report to work on the next shift, or whether or not they will be laid off.

THE COURT: All right, now, what are you going to do if the Court of Appeals issues a stay at noon [11] Friday?

A. We will go back to the City plan, sir.

THE COURT: All right, do you have any questions, Mr. Fields?

MR. FIELDS: Yes, sir.

Cross Examination

By Mr. Fields:

Q. Now, Mr. Sabatini, when will the people have to make their options? A. I am sure, Mr. Fields—Well, I'm not sure, I will speculate, because of the notice that was put out on the 28th of May that most of the people who suspect that they may be affected have considered what those options are. We hope that's true. We will be approached by them, as I say, no earlier than tomorrow noon and no later than Thursday morning.

Q. Now, as you know, the injunction specifies that you are supposed to maintain a percentage of blacks in each classification that comes under the injunction? A. That's correct.

Q. As of what date are you determining what this percentage is? A. We will determine that date, I assume, at this particular point in time, that the point in time that we implement that.

Q. So tomorrow you will have determined what percentage you will have in each of these classifications? [12] A. Yes, I think, to give you an example, if I may, on the way we are approaching this.

Judge—

THE COURT: Have you got an extra copy?

A. Yes.

(Document passed to opposing counsel and the Court.)

A. I think our plan is basically, I believe right in compliance with the Judge's order, Mr. Fields, and ready to go into effect.

What you don't see here are the names, and I explained that earlier, and I will add to that, and I think we have a concern for the accuracy of the information generally when you are talking about one's job, not to be in error in terms of identifying who is going to be laid off and who isn't.

So what you are looking at is simply numbers from the least senior to the most senior, and you will see that in order to comply with the percentage balance, instead of the twenty-eight positions which would be the City's proposal to lay off, we would proceed to thirty-seven positions. And in that process we would bypass four blacks, as you see circled.

Q. All right. [13] A. (Continuing) To go beyond the twenty-eight.

Q. So you have already determined the percentages then? A. Yes, sir.

Q. For each classification? A. And we have looked at that periodically as there are changes in the organization.

Q. So your last change will be tomorrow if there were any changes that somebody quit or say died tomorrow? A. As I said before, I rely on legal counsel, but I assume it would be at the point of the implementation.

Q. That's fine, so what you have here then really you have both plans, if you have to—If you comply with this injunction you have one plan, and if this injunction is stayed for any purpose then you have your alternate plan ready to go, too? A. That's correct.

MR. FIELDS: Okay, that's fine. All right, Judge.

THE COURT: All right, do you want to bring anything else out?

MR. FIELDS: I'm sorry, excuse me, Your Honor.

Q. Now, we've got a problem, Mr. Sabatini, with some positions you have eliminated entirely. I have one particularly with a black lieutenant who is in Research and Development, who has been detailed, I found out yesterday, to Personnel [14], and who is disabled and will not have any bumping rights.

Have you made any provisions for that particular individual? A. If you are talking about special or separate arrangements, no we have not.

The gentleman has, of course, the option to bump back, and as we acknowledge he is not physically fit to perform in his previous capacity. If he is eligible for retirement, yes, that option is available to him.

If he cannot perform the job, of course, then he is scheduled then for layoff, which I believe is the case in this particular situation.

We are attempting to place as many people as we car since in effect these people are not only out of employment, but there is also a selfish motive in that there are unemployment costs incurred by the City for each employee laid off.

We have a plan that is put together that is intended to help as many employees as possible. So far in-house we have reemployed about eight people, and we have a layoff policy committee. If this gentleman, should they feel, that there is extra treatment due him, or that he has been treated unfairly, or whatever, can appear before this layoff policy committee, we have had several employees come to us and some requests have been rejected and some have been [15] accepted.

There are no special rights for this gentleman, no.

Q. In this case, though, if—Correct me if I am wrong, this is the person after we entered into our consent decree that this was the first black to be in administration, if I'm not correct? A. I believe you are correct.

Q. Okay, now, I understand the injunction only goes to certain classifications, they tried to do it in a numerical way. But is there any possibility that a new position or this position might be reopened in administration and he could come back? A. I doubt that this position would be reopened in administration.

One of the things that is built into a layoff policy is that when an employee, regardless of his classification, is laid off to the street we, in processing him for layoff, record what his qualifications and experience and those kind of things that he has going for him, so that whenever there is an opening, regardless of whether it is in that classification or not, if the individual who has been laid off from the City has the qualifications to apply for that opening then he will be contacted by our outreach program to come on in on his own initiative to apply for that position.

[16] Q. Well, in this case this man—This man is a lieutenant and you don't have any idea what the administration, whether you are going to have any other lieutenants in administration or not now? A. Basically, Mr. Fields, when the budget is set it is set for the fiscal year.

But the number of positions and the number of slots given the bureau or given the division are identified in the budget process, and for all intents and purposes locked in for that year.

Q. Well, let's say you had another position in administration that would come open or you could make one, or whatever, would this person have a first priority for that even though he is going onto the street rather than on a layoff? A. If he—If there are people laid off in that classification who have bumped out of it they have the right to bump back into it first of all.

If a position comes open in administration and there is no one on the layoff roster to recall, and he has qualifications, then we will reach out to invite him to apply for that position.

Q. But he has to apply, he does not have any bumping rights? A. That's correct, he has bumping rights only back into the previous classification.

[17] Q. So, in effect, what is going to happen, if this scenario goes through, is that the only black that we have been able to get into administration is on the streets, and does not have any priority in coming back into administration if a position reopens? A. That's correct.

MR. FIELDS: All right, thank you.

THE COURT: Mr. Blair?

By Mr. Blair:

Q. Mr. Sabatini, the City prepared a layoff policy on or about May 4, is that corect? A. That's correct.

Q. And it was the City's intent to follow the layoff policy with regard to the Fire Department prior to the Court's order in this case, is that right? A. That's correct.

Q. All right, now, I would like to pass a copy of this to you and see if you can identify this as being a correct copy of that policy? A. It appears to be so.

MR. BLAIR: May I approach the witness?

THE COURT: Yes.

Q. Mr. Sabatini, am I correct that the City intends to [18] follow this policy with regard to the layoffs that are to be made on Friday, June 26th, with the exception of skipping the names of blacks so as to preserve the percentage of blacks in the various classifications pursuant to the Court's order? A. That's what we understand the Court orders to be, and that's what we intend to do, yes.

Q. I would like to ask you this, on page 4 of this agreement, or rather not of this agreement, but of this policy, it does provide, does it not, that a senior employee who is bumping down into a lower classification will have a one time option to bump, which must be exercised within five working days of the notification of layoff? A. That's the way the policy reads, that correct.

Q. Okay, now, as I understood your testimony earlier you have not, at this point, notified the specific employees of either their layoff or their bumping rights, is that correct? A. That's correct—Well, yes, that's correct.

Q. So that if you notify employees, let's say tomorrow afternoon, Wednesday afternoon, the 24th, or Thursday morning the 25th, you are not going to be able to comply with your own policy with regard to the five working days notice? A. Mr. Blair, I can answer that two ways.

We did not notify specifically each employee as it [19] related to the thirty day notice requirement.

We found a system by which it was handled, I think, in a much better way than to notify them individually, because we didn't know who they were apparently.

I would say that during that period of time, since the 28th of May, employees who may have been involved in this particular process, and may be affected as of the 26th, have had a considerable amount of time to think about what their options are.

If we—I would not be in a position right now to advise you as to how we would handle that if we ran into what would be an honest, sincere and genuine problem, what an individual was choosing to do, aside from the five day requirement.

Q. But I am correct that the specific employees who will be laid off or bumped have not been told that they are going to be laid off or bumped, is that correct? A. In

those particular classifications, those specific employees have not been told that.

Q. We are talking about private, driver, lieutenant and inspector? A. That's correct.

Q. And you do intend to notify them on either late tomorrow afternoon or Thursday morning, is that right? A. That's the intent, yes, sir.

[20] MR. BLAIR: Okay.

I believe that's all.

If Your Honor please, I would like to have this marked and move the admission of it.

THE COURT: All right.

MR. FIELDS: I believe it was marked the last hearing.

MR. BLAIR: It was, but I don't know if he has a copy of it here. I just want to make sure it's in the record.

Cross-Examination

By Mr. Fields:

Q. Do you have any other sheets on any other plans with you, Mr. Sabatini? A. Yes, sir, one other.

Q. Do you have copies of them? A. Yes, I do, just one other, and that's—The two that I guess we have been primarily concerned about, the private that is being laid off to the street and the lieutenant classification. Those are the only two that I have.

Q. All right, thank you. A. As you can see, this one also reflects the same.

The circles are the blacks who are in the classification [21] who would be passed over and preserved in that classification.

Going by the seniority plan of the City we would go down thirteen positions, and based on the Court's order we

would go thirty-three positions and preserve the several blacks that are required.

Q. Well, so what is going to happen here, it will be thirteen whites and no blacks? A. No, sir, by the Court order we would go all the way to number thirty-three to make up the—If I'm not mistaken it would be two blacks and fourteen whites, I believe.

Q. Okay. A. (Continuing) So you would have to go all the way to number thirty-three to pick up the fourteenth white.

MR. FIELDS: I see, all right, thank you.

Redirect Examination

By Mr. Britt:

Q. Mr. Sabatini, Mr. Fields was alluding to a black lieutenant in administration that apparently has some problem that he cannot bump back or go back to the Firefighting Department, is that correct? A. That's what I understand.

Q. Do you know if there is also a private in that same position? A. Yes, we had a black private in administration, and [22] we were able, through our placement efforts, to place him in another bureau in the City with finance and administration called the Resource Management.

Q. Was that the fire private or was that the personnel technician? A. May I refer to my notes?

Q. Sure. A. I'm sorry, that was a black male personnel technician that was placed in F and A.

There was a fire private in administration in the same function, Research and Development, as the lieutenant that Mr. Fields referred to, and that private is white, and he is being laid off.

MR. BRITT: That's all I have.

Recross Examination

By Mr. Fields:

Q. Just for the record, he is being laid off or is actually being sent, or he has to retire, isn't he disabled, as

well? A. My notes do not say that to be true. What his condition is I do not know. He may also be one of the—I believe he is a disabled person.

Q. All right, then, that's fine.

[23] By the Court:

Q. Yesterday when you weren't here we had some problem about the computer printout showing seventeen home safety fire representatives, and Mr. Britt being informed that there were only five.

Has anybody asked you about that? A. Yes, sir, I believe that the discrepancy, Judge, is in where the funding of those home fire safety representatives comes from.

There are, I believe, fourteen or maybe fifteen home fire safety representatives who are funded by the Federal Government under the CETA program, and five home fire safety representatives who are funded with City money.

The federal regulations of the CETA program dictate that before you lay off any permanent City permanent position that you must delete all of the CETA positions first. So the figure is right, I think the difference is the matter of funding. There are only five city funded positions.

Q. Is home fire safety or home safety fire? A. My notes say home fire safety, sir.

Q. Well, are you actually laying off twelve CETA positions? A. It is not laying off.

Q. Terminating? A. Terminating.

Q. No more CETA? [24] A. Twelve of them are CETA people. That's true in every classification where we are laying off permanent City employees we must first terminate those CETA employees.

THE COURT: All right, do counsel understand that?

Q. You are terminating all CETA employees and all the City funded employees? A. Yes, sir, that's right, in the home fire safety program that entire function is being absolved.

THE COURT: All right, do counsel understand that?

MR. FIELDS: Yes, sir, I understand that my numbers were correct, it was just a matter of funding.

THE COURT: Well, what do the home fire safety representatives do?

A. This is a function that I think basically it calls on individuals' homes, and maybe some establishments also, to counsel people. It doesn't get into the actual inspection, but more the educational process or conditioning process for good safety practices.

THE COURT: All right, thank you, Mr. Sabatini, you have been helpful to the Court, and I appreciate it.

THE WITNESS: You are welcome.

THE COURT: I'm going to sign the order. It won't get filed until in the morning. It is all [25] right with me, you can mark it filed in court.

And it seems to me that things are reasonably explainable.

I'm not too concerned about when the time—I have known all along that there was a problem of whenever you decide who you are going to layoff, to find out who had quit or who had left for any one of the reasons, whether you do it early or late, that's still a problem. And I think it is to the City's best interest to take advantage of all people who had an opportunity to resign so that they didn't have to lay off somebody.

The order still provides that the Court will be available until two o'clock.

I have not been persuaded that the Court should intercede in these two areas that we reserved. I don't know whether Mr. Fields wants to put on some more proof.

MR. FIELDS: Your Honor, I can put it on now or Friday at two o'clock. I have the lieutenant here ready to testify what his function is and how that will be.

THE COURT: All right, let's put him on now.

MR. FIELDS: All right, Mr. Tate.

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TRANSCRIPT OF ORAL RULING OF THE COURT ON JUNE 23, 1981

[41] THE COURT: All right, the motion is granted, it will be a notice by Friday, or in time for them to make their election.

I would like to say that this matter was not put in any motion or anything, it came up as an afterthought on cross-examination, it was beyond the scope of direct examination, and it is just an obstacle that is being tried to be put in the way of the layoffs.

[42] Now, I didn't call for the layoff, but I'm certainly not going to be a vehicle to get in this dispute between the Union and the City as to whether or not they can do it, and that's the only purpose of it.

I'm prepared to find, from Mr. Sabatini's testimony, that reasonable notice has been given to these people that there were going to be some choices to be made.

I'm sorry it came down to the last minute, but it did.

Also, I want to make this observation and this holding. On the home fire safety representatives, now that I know that those are CETA employees, and everybody that is a City employee has known for a long time that there was not going to be any more CETA. That's not all the City Council's fault, but there is no more CETAs.

I do recall that in earlier testimony in this case it was described how these procedures were or these jobs were gone into, and what they could do, and it was a judgmental evaluation. I don't find it unreasonable to do away with this home safety fire, or fire safety representative, whose duties are not the same as going out and fighting fires.

[43] And I don't find anything racial about that, it was a judgmental decision that is not established to be motivated by race.

With regard to Mr. Tate, I'm very sorry for Mr. Tate. He is in a category where the City for years has had the problem of what to do with somebody who has been injured in his work and they don't know what to do with him. They found a job for him, and it apparently was a manufactured job.

I do not think it would be appropriate for this Court to tell the City that he should be transferred from that to some other job in the broad category of administration.

I hope they can find something for him in another area, but, once again, this policy I think is and always has been the same for blacks and whites.

I'm sorry for him, and of course this is a tough decision that the City officials have to make. And a lot of them are tough, because all of them who get laid off are going to be out of work, who ultimately get laid off.

Now, they are tough decisions, but you must remember that these are non—This is none of my business, unless there is some racial discrimination. And I don't think we ought to get collateral matters [44] into this hearing so that this Court is blamed for trying to determine what duties should be assigned to people, as long as they are not discriminatory.

Now, the fact that it affects blacks more than whites, in the first place a pretty good argument can be made for the overall effect that we have been trying to preserve what the blacks fought so hard to accomplish. And in the process some blacks are going to have to be laid off. Now, I'm sorry, but we have done the best we can.

I will still be here Friday in case there are some problems that we are not now aware of, but as far as I am concerned you can have an order approving the disposition of the whole category of home fire safety representatives, and the Research and Development lieutenant.

And I don't know that anything else is unresolved, the previous order took care of the Court's other ruling on these five categories that were brought up in the motion.

MR. FIELDS: Your Honor, the only thing that may be unresolved will be after we have had a chance to look at it.

THE COURT: Well, I will be here Friday, I've [45] got plenty to do, and I certainly won't miss you if you don't get here, I will put it that way.

Mrs. LeFon, you may adjourn court.

(ADJOURNMENT)

OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

(Reproduced in Petition for Certiorari of Union and City at A.1)

(Filed May 7, 1982)

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Nos. 81-5348/49

CARL W. STOTTS, Individually and on behalf of all others similarly situated, and FRED L. JONES,
Plaintiffs-Appellees,

vs.

MEMPHIS FIRE DEPARTMENT; ROBERT W. WALKER, CITY OF MEMPHIS, and JOSEPH SABATINI,
Defendants-Appellants (81-5348),

FIREFIGHTERS LOCAL UNION 1784,
Defendant-Intervenor-Appellant (81-5349).

Before: KEITH and MARTIN, Circuit Judges and DUNCAN, District Judge.

JUDGMENT

APPEAL from the United States District Court for the Western District of Tennessee.

THIS CAUSE came on to be heard on the record from the United States District Court for the Western District of Tennessee and was argued by counsel.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of

the said District Court in this cause be and the same is hereby affirmed.

It is further ordered that Plaintiffs-Appellees recover from Appellants the costs on appeal, as itemized below, and that execution therefor issue out of said District Court, if necessary.

ENTERED BY ORDER OF THE COURT

/s/ John P. Hehman
Clerk

[Statement of Costs Omitted in Printing]